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Supreme Court, U.S.
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No. 00-347

IN THE

Supreme Court of the United States

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company; WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company; and STEPHEN NG, a Hong Kong citizen,

Petitioners,

v.

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

VOLUME I OF V
APPENDICES A TO BC

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December 21, 2000

PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 5, 2000
CERTIORARI GRANTED NOVEMBER 6, 2000

034 PP

TABLE OF CONTENTS FOR JOINT APPENDIX
("J. App.")

Page

VOLUME I

Documents Omitted from the Joint Appendix

Docket Entries

Appendix A — Docket Entries for *United Int'l Holdings, Inc., et al. v. The Wharf (Holdings) Limited, et al.*, No. 94-CV-2560, U.S. District Court for the District of Colorado A-1

Appendix B — Docket Entries for *The Wharf (Holdings) Limited, et al. v. United Int'l Holdings, Inc.*, No. 97-1421, United States Court of Appeals for the Tenth Circuit B-1

Appendix C — Docket Entries for *The Wharf (Holdings) Limited, et al. v. United Int'l Holdings, Inc.*, No. 98-1002, United States Court of Appeals for the Tenth Circuit C-1

Pre-trial Filings (U.S. District Court for the District of Colorado)

Appendix D — Motion to Dismiss Plaintiffs' Claims for Lack of Subject Matter Jurisdiction, dated January 17, 1995 (Aplt. App. 36-54) D-1

Appendix E — Reply in Support of Motion to Dismiss UIHI/UIH Asia's Claims for Lack of Subject Matter Jurisdiction, dated February 27, 1995 (Aplt. App. 55-70) E-1

Appendix F — Amended Complaint & Jury Demand, dated March 27, 1995 (Aplt. App. 71-99) F-1

Page

Appendix G Motion to Dismiss all of Plaintiffs' Claims Pleaded in the Amended Complaint for Lack of Subject Matter Jurisdiction, dated April 13, 1995 (Aplt. App. 118-126) G-1

UIH Damages Expert Report (U.S. District Court for the District of Colorado)

Appendix H -UIH v. Wharf: Damage Assessment by Robert M. Jones, President, Malarkey-Taylor Associates, Inc. (MTA), dated July 7, 1995 (UIH Damages Expert Report) (Add. 645-683) H-1

Pretrial Order (U.S. District Court for the District of Colorado)

Appendix I Pretrial Order, filed March 4, 1996 (Aplt. App. 1196-1229) I-1

Trial Transcript Excerpts (U.S. District Court for the District of Colorado)

Appendix J Excerpt from Direct Examination of W. Elsner dated: February 18, 1997 (Aplt. App. 2336; Transcript 373) J-1

Appendix K Excerpt from Direct Examination of W. Elsner dated: February 18, 1997 & February 20, 1997 (Aplt. App. 2338-2366; Transcript 375-403) K-1

Appendix L Excerpt from Plaintiffs' Opening Statement dated: February 19, 1997 (Aplt. App. 2211:02-2213:16; Transcript 248:02-250:16) L-1

		Page
Appendix M	Excerpt from Plaintiffs' Opening Statement dated: February 19, 1997 (Aplt. App. 2198:02-2200:16; Transcript 235:12-237:16)	M-1
Appendix N	Excerpt from Plaintiffs' Opening Statement dated: February 20, 1997 (Aplt. App. 2235:10-2237:21, Transcript 272:10-274:21)	N-1
Appendix O	Excerpt from Cross-Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2467:19-2469:08; Transcript 504:19-506:08)	O-1
Appendix P	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2376-2399; Transcript 413-436)	P-1
Appendix Q	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2443-2447; Transcript 480-484)	Q-1
Appendix R	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2450-2454; Transcript 487-491)	R-1
Appendix S	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2422-2424; Transcript 459-461)	S-1
Appendix T	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2409-2411; Transcript 446-448)	T-1

		Page
Appendix U	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2401-2406; Transcript 438-443)	U-1
Appendix V	Excerpt from Direct Examination of W. Elsner dated: February 20, 1997 (Aplt. App. 2426-2439; Transcript 463-476)	V-1
Appendix W	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2608-2632; Transcript 641-665)	W-1
Appendix X	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2636-2641; Transcript 669-674)	X-1
Appendix Y	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2591-2605; Transcript 624-638)	Y-1
Appendix Z	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2643-2656; Transcript 676-689)	Z-1
Appendix AA	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2580-2589; Transcript 613-622)	AA-1
Appendix AB	Excerpt from Direct Examination of M. Schneider dated: February 21, 1997 (Aplt. App. 2659-2670; Transcript 692-703)	AB-1

Page

Appendix AC Excerpt from Redirect Examination of W. Elsner dated: February 24, 1997 (Aplt. App. 2765-2766; Transcript 798-799) AC-1

Appendix AD Excerpt from Cross-Examination of W. Elsner dated: February 24, 1997 (Aplt. App. 2696:06-2698:16; Transcript 729:06-731:16) AD-1

Appendix AE Excerpt from Redirect Examination of W. Elsner dated: February 24, 1997 (Aplt. App. 2785-2789; Transcript 818-822) AE-1

Appendix AF Excerpt from Direct Examination of M. Schneider dated: February 24, 1997 (Aplt. App. 2841-2854; Transcript 874-887) AF-1

Appendix AG Excerpt from Redirect Examination of W. Elsner dated: February 24, 1997 (Aplt. App. 2770-2773; Transcript 803-806) AG-1

Appendix AH Excerpt from Redirect Examination of W. Elsner dated: February 24, 1997 (Aplt. App. 2780:22-2782:03; Transcript 813:22-815:03) AH-1

Appendix AI Excerpt from Direct Examination of P. Duffy dated: February 25, 1997 (Aplt. App. 2873-2874; Transcript 906-907) AI-1

Appendix AJ Excerpt from Direct Examination of P. Duffy dated: February 25, 1997 (Aplt. App. 2956:20-2963:07; Transcript 989:20-996:07) AJ-1

Page

Appendix AK Excerpt from Cross-Examination of P. Duffy dated: February 25, 1997 (Aplt. App. 3016; Transcript 1049) AK-1

Appendix AL Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3228; Transcript 1261) AL-1

Appendix AM Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3230-3240; Transcript 1263-1273) AM-1

Appendix AN Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3250-3258; Transcript 1283-1291) AN-1

Appendix AO Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3267-3283; Transcript 1300-1316) AO-1

Appendix AP Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3295-3298; Transcript 1328-1331) AP-1

Appendix AQ Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3188-3198; Transcript 1221-1231) AQ-1

Page

Appendix AR Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3142-3167; Transcript 1175-1200) AR-1

Appendix AS Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3202:14-3205:05; Transcript 1235:14-1238:05) AS-1

Appendix AT Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3123-3139; Transcript 1156-1172) AT-1

Appendix AU Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3202-3212; Transcript 1235-1245) AU-1

Appendix AV Excerpt from Direct Examination of M. Schneider dated: February 26, 1997 (Aplt. App. 3172-3183; Transcript 1205-1206) AV-1

Appendix AW Excerpt from Cross-Examination of M. Schneider dated: February 27, 1997 (Aplt. App. 3450-3452; Transcript 1485-1487) AW-1

Appendix AX Excerpt from Cross-Examination of M. Schneider dated: February 27, 1997 (Aplt. App. 3459:14-3463:24; Transcript 1494:14-1498:24) AX-1

Page

Appendix AY Excerpt from Redirect Examination of M. Schneider dated: February 28, 1997 (Aplt. App. 3635-3641; Transcript 1670-1676) AY-1

Appendix AZ Excerpt from Redirect Examination of M. Schneider dated: February 28, 1997 (Aplt. App. 3644-3645; Transcript 1679-1680) AZ-1

Appendix BA Excerpt from Redirect Examination of M. Schneider dated: February 28, 1997 (Aplt. App. 3647-3655; Transcript 1682-1690) BA-1

Appendix BB Excerpt from Redirect Examination of M. Schneider dated: February 28, 1997 (Aplt. App. 3603-3607; Transcript 1638-1642) BB-1

Appendix BC Excerpt from Redirect Examination of M. Schneider dated: February 28, 1997 (Aplt. App. 3615:07-3615:19; Transcript 1650:07-1650:19) BC-1

Page

VOLUME II

Appendix BD Excerpts from Deposition Testimony of S. Ng dated: March 3, 1997 (Aplt. App. 3725-3885; Transcript 1746 (1-58); 1749 (1-38); 1756 (1-37); 1757 (1-28)) BD-1

Appendix BE Excerpt from Direct Examination of W. Hudon dated: March 4, 1997 (Aplt. App. 3996-3997; Transcript 1870-1871) BE-1

Appendix BF Excerpt from Direct Examination of W. Hudon dated: March 4, 1997 (Aplt. App. 4000-4002; Transcript 1874-1876) BF-1

Appendix BG Excerpt from Deposition Testimony of S. Ng dated: March 4, 1997 (Aplt. App. 4078-4108; Transcript 1825 (1-31) BG-1

Appendix BH Excerpt from Direct Examination of W. Hudon dated: March 4, 1997 (Aplt. App. 3967-3993; Transcript 1841-1867) BH-1

Appendix BI Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4229-4233; Transcript 2072-2076) BI-1

Appendix BJ Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4288; Transcript 2131) BJ-1

Appendix BK Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4223-4227; Transcript 2065-2070) BK-1

Page

Appendix BL Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4316-4320; Transcript 2159-2163) BL-1

Appendix BM Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4169-4177; Transcript 2012-2020) BM-1

Appendix BN Excerpt from Deposition Examination of E. Fung dated: March 5, 1997 (Aplt. App. 4158-4161; Transcript 2001-2004) BN-1

Appendix BO Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4240-4283; Transcript 2083-2126) BO-1

Appendix BP Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4294; Transcript 2137) BP-1

Appendix BQ Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4299-4308; Transcript 2142-2151) BQ-1

Appendix BR Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4329-4331; Transcript 2172-2174) BR-1

Appendix BS Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4333-4335; Transcript 2176-2178) BS-1

Page

Appendix BT Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4207; Transcript 2050) BT-1

Appendix BU Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4209-4219; Transcript 2052-2062) BU-1

Appendix BV Excerpt from Direct Examination of M. Fries dated: March 5, 1997 (Aplt. App. 4183-4185; Transcript 2026-2085) BV-1

Appendix BW Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt. App. 4371:23-4374:20; Transcript 2214:23-2217:20) BW-1

Appendix BX Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt. App. 4419:07-4425:24; Transcript 2262:07-2268:24) BX-1

Appendix BY Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt. App. 4557-4558; Transcript 2400-2401) BY-1

Appendix BZ Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt. App. 4397:20-4403:15; Transcript 2240:20-2246:15 ..... BZ-1

Appendix CA Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt App. 4546:18-4550:18; Transcript 2389:18-2393:18) CA-1

		Page
Appendix CB	Excerpt from Cross-Examination of M. Fries dated: March 6, 1997 (Aplt. App. 4358; Transcript 2201)	CB-1
Appendix CC	Excerpt from Deposition Testimony of G. Li dated: March 7, 1997 (Aplt. App. 4641-4642; Transcript 2484-2485)	CC-1
Appendix CD	Excerpt from Deposition Testimony of G. Li dated: March 7, 1997 (Aplt. App. 4646-4647; Transcript 2489-2490)	CD-1
Appendix CE	Excerpt from Deposition Testimony of G. Higgonson dated: March 7, 1997 (Aplt. App. 4686-4687; Transcript 2529-2530)	CE-1
Appendix CF	Excerpt from Redirect Examination of M. Fries dated: March 7, 1997 (Aplt. App. 4604-4606; Transcript 2447-2449)	CF-1
Appendix CG	Excerpt from Redirect Examination of M. Fries dated: March 7, 1997 (Aplt. App. 4608-4614; Transcript 2451-2457)	CG-1
Appendix CH	Excerpt from Deposition Testimony of Q. Law dated: March 7, 1997 (Aplt. App. 4680-4681; Transcript 2523-2524)	CH-1
Appendix CI	Excerpt from Redirect Examination of M. Fries dated: March 7, 1997 (Aplt. App. 4599-4600; Transcript 2442-2443)	CI-1

Page

Appendix CJ Excerpt from Direct Examination of B. Williams dated: March 10, 1997 (Aplt. App. 4841-4848; Transcript 2684-2691) CJ-1

Appendix CK Excerpt from Direct Examination of B. Williams dated: March 10, 1997 (Aplt. App. 4776-4778; Transcript 2619-2621) CK-1

Appendix CL Excerpt from Direct Examination of B. Williams dated: March 10, 1997 (Aplt. App. 4791-4832; Transcript 2634-2675) CL-1

Appendix CM Excerpt from Direct Examination of R. Pittman dated: March 11, 1997 (Aplt. App. 5021-5025; Transcript 2864-2868) CM-1

Appendix CN Excerpt from Cross-Examination of R. Pittman dated: March 11, 1997 (Aplt. App. 5045:21-5049:24; Transcript 2888:21-2892:24) CN-1

Appendix CO Excerpt from Direct Examination of R. Pittman dated: March 11, 1997 (Aplt. App. 5016-5018; Transcript 2859-2861) CO-1

Appendix CP Excerpt from Direct Examination of R. Pittman dated: March 11, 1997 (Aplt. App. 5005; Transcript 2848) CP-1

Appendix CQ Excerpt from Direct Examination of R. Pittman dated: March 11, 1997 (Aplt. App. 4964-4994; Transcript 2807-2837) CQ-1

Page

Appendix CR Excerpt from Direct Examination of P. Case dated: March 11, 1997 & March 12, 1997 (Aplt. App. 5140-5199; Transcript 2983-3042) CR-1

Page

VOLUME III

Appendix CS Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5277-5279; Transcript 3120-3122) CS-1

Appendix CT Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5289-5291; Transcript 3132-3134) CT-1

Appendix CU Excerpt from Direct Examination of P. Case dated: March 12, 1997 (Aplt. App. 5208-5209; Transcript 3051-3052) CU-1

Appendix CV Excerpt from Direct Examination of D. D'Ottavio dated: March 12, 1997 (Aplt. App. 5362-5367; Transcript 3205-3210) CV-1

Appendix CW Excerpt from Direct Examination of B. Dvorak dated: March 12, 1997 (Aplt. App. 5256-5269; Transcript 3099-3112) CW-1

Appendix CX Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5442-5443; Transcript 3263-3264) CX-1

Appendix CY Excerpt from Direct Examination of D. Keefe dated: March 13, 1997 (Aplt. App. 5583-5589; Transcript 3404-3410) CY-1

Appendix CZ Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5448-5482; Transcript 3269-3303) CZ-1

Page

Appendix DA Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5398-5399; Transcript 3219-3220) DA-1

Appendix DB Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5405-5434; Transcript 3226-3255) DB-1

Appendix DC Excerpt from Direct Examination of D. D'Ottavio dated: March 13, 1997 (Aplt. App. 5487-5490; Transcript 3308-3311) DC-1

Appendix DD Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5618-5626; Transcript 3439-3447) DD-1

Appendix DE Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5651-5652; Transcript 3472-3473) DE-1

Appendix DF Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5654-5656; Transcript 3475-3477) DF-1

Appendix DG Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5645-5647; Transcript 3466-3468) DG-1

Appendix DH Excerpt from Cross-Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5668-5669; Transcript 3489-3490) DH-1

		Page
Appendix DI	Excerpt from Direct Examination of G. Schneider dated: March 14, 1997 (Aplt. App. 5629-5643; Transcript 3450-3464)	DI-1
Appendix DJ	Excerpt from Direct Examination of P. Woo dated: March 17, 1997 (Aplt. App. 5897:04-5903:06; Transcript 3718:04-3724:06)	DJ-1
Appendix DK	Excerpt from Cross-Examination of P. Woo dated: March 18, 1997 & March 19, 1997 (Aplt. App. 5953-6398; Transcript 3774-4219)	DK-1
Appendix DL	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6581:20-6588:13; Transcript 4403:20-6588:13)	DL-1
Appendix DM	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6564-6565; Transcript 4386-4387)	DM-1
Appendix DN	Excerpt from Direct Examination of E. Fung dated: March 20, 1997 (Aplt. App. 6513:07-6524:14; Transcript 4335:07-4346:14)	DN-1
Appendix DO	Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6782-6816; Transcript 4604-4638)	DO-1
Appendix DP	Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6659:05-6660:05; Transcript 4481:05-4482:05)	DP-1

Page

Appendix DQ Excerpt from Direct Examination of E. Fung dated: March 21, 1997 (Aplt. App. 6743:11-6745:04; Transcript 4565:11-4567:04) DQ-1

Appendix DR Excerpt from Direct Examination of S. Ng dated: March 25, 1997 (Aplt. App. 7116:02-7116:16; Transcript 4938:02-4938:16) DR-1

Appendix DS Excerpt from Direct Examination of S. Ng dated: March 26, 1997 (Aplt. App. 7223-7224 ; Transcript 5045-5046) DS-1

Page

VOLUME IV

Appendix DT Excerpt from Cross-Examination of S. Ng dated: March 26, 1997 & March 28, 1997 (Aplt. App. 7226-7670; Transcript 5048-5471). . . . DT-1

Page

VOLUME V

Appendix DU Excerpt from Cross-Examination of S. Ng dated: March 27, 1997 (Aplt. App. 7582:25-7584:25; Transcript 5395:25-5397:25) DU-1

Appendix DV Excerpt from Deposition Testimony of S. Ng dated: March 28, 1997 (Aplt. App. 7720-7737; Transcript 5428 (1-6); 5435 (1-7); 5437 (1-5)) DV-1

Appendix DW Excerpt from Cross-Examination of E. Fung dated: March 31, 1997 (Aplt. App. 7740-7918; Transcript 5523-5701) DW-1

Appendix DX Excerpt from Defendants' Summation dated: April 1, 1997 (Aplt. App. 8174:20-8177:16; Transcript 5955:20-5958:16) DX-1

Appendix DY Excerpt from Deposition Testimony of S. Norman dated: April 1, 1997 (Aplt. App. 8128; Transcript 5909) DY-1

Appendix DZ Excerpt from Deposition Testimony of S. Norman dated: April 1, 1997 (Aplt. App. 8131-8132; Transcript 5912-5913) DZ-1

Appendix EA Excerpt from Deposition Testimony of H. Van Demark dated: April 1, 1997 (Aplt. App. 7939; Transcript 5720) EA-1

		Page
Appendix EB	Excerpt from Deposition Testimony of H. Van Demark dated: April 1, 1997 (Aplt. App. 8026-8027; Transcript 5807-5808)	EB-1
Appendix EC	Excerpt from Direct Examination of R. Jones dated: April 7, 1997 (Aplt. App. 8332-8340; Transcript 6113-6121)	EC-1
Appendix ED	Excerpt from Direct Examination of R. Jones dated: April 7, 1997 (Aplt. App. 8232:12-8232:25; Transcript 6013:12-6013:25)	ED-1
Appendix EE	Excerpt from Direct Examination of R. Jones dated: April 7, 1997 (Aplt. App. 8287:07-8294:06; Transcript 6068:07-6075:06)	EE-1
Appendix EF	Excerpt from Direct Examination of R. Jones dated: April 7, 1997 (Aplt. App. 8273:16-8276:03; Transcript 6054:16-6057:03)	EF-1
Appendix EG	Excerpt from Direct Examination of R. Jones dated: April 7, 1997 (Aplt. App. 8187-8328; Transcript 5968-6109)	EG-1
Appendix EH	Excerpt from Cross-Examination of R. Jones dated: April 8, 1997 (Aplt. App. 8446:01-8448:06; Transcript 6227:01-6229:06)	EH-1
Appendix EI	Excerpt from Direct Examination of F. Bateson dated: April 17, 1997 (Aplt. App. 9695; Transcript 7476)	EI-1

Page

Appendix EJ Excerpt from Direct Rebuttal of J. Bowles dated: April 17, 1997 (Aplt. App. 9824-9832; Transcript 7605-7613) EJ-1

Appendix EK Excerpt from Direct Rebuttal of J. Bowles dated: April 17, 1997 (Aplt. App. 9850-9892; Transcript 7631-7673) EK-1

Jury Instructions (U.S. District Court for the District of Colorado)

Appendix EL Bench Ruling of Kane J. on Jury Instructions, dated April 21, 1997 (Aplt. App. 1549-57) EL-1

Appendix EM Final Jury Instructions, read on April 23, 1997 (Supp. App. 39-117) EM-1

Appendix EN Jury Instructions re: Breach of Fiduciary Duty, dated April 23, 1997 (Aplt. App. 10381:13-10383:17; Transcript 8162:13-8164:17) EN-1

Appendix EO Jury Instructions re: Contract Consideration, dated April 23, 1997 (Aplt. App. 10376:08-10376:15; Transcript 8157:08-8157:15) EO-1

Jury Verdict Forms (U.S. District Court for the District of Colorado)

Appendix EP All of the Jury Verdict Forms, dated April 29, 1997 (Aplt. App. 1563-1591) EP-1

Page

Defendants' Motion for Judgment as a Matter of Law, for New Trial and for Other Relief, filed June 27, 1997 (U.S. District Court for the District of Colorado)

Appendix EQ Selected exhibits submitted in connection with Plaintiffs' ("UIH") Opposition to Defendants' Motion for Judgment as a Matter of Law, for New Trial and for Other Relief, filed June 27, 1997 (Supp. App. 4A-1-4A-6) EQ-1

Excerpts from Oral Argument (U.S. District Court for the District of Colorado)

Appendix ER Excerpt from Defendants' Oral Argument dated: October 23, 1997 (Aplt. App. 2015; Transcript 3) ER-1

Appendix ES Excerpt from Defendants' Oral Argument dated: October 23, 1997 (Aplt. App. 2028-2029; Transcript 16-17) ES-1

Order Allowing Certiorari (Supreme Court of the United States)

Appendix ET Order Allowing Certiorari, filed November 6, 2000 ..... ET-1

DOCUMENTS OMITTED FROM JOINT APPENDIX BUT INCLUDED IN PETITIONERS' APPENDIX TO PETITION FOR CERTIORARI, OR PETITIONERS' APPENDIX TO REPLY BRIEF IN OPPOSITION

The following opinions, decisions, judgments, orders, transcript excerpts and statutes have been omitted in printing this Joint Appendix because they appear on the following pages in the Petitioners' Appendix ("P.App.") to the Petition for Writ of Certiorari, filed September 5, 2000, or to the Reply Brief in Opposition, filed October 11, 2000:

Excerpt from Direct Examination of W. Elsner, dated February 20, 1997 (Aplt. App. 2422:02-2423:15; Transcript 459:02-460:15) (United States District Court for the District of Colorado) ..... P. App. Y

Excerpt from Direct Examination of M. Schneider, dated February 26, 1997 (Aplt. App. 3185:06-3185:11; Transcript 1218:06-1218:11) (United States District Court for the District of Colorado) ..... P. App. AA

Stipulation of Parties Regarding Expenses Incurred by Plaintiffs, dated March 14, 1997 (United States District Court for the District of Colorado) ..... P. App. AY

Excerpt from Direct Examination of R. Jones, dated April 7, 1997 (Aplt. App. 8301:08-8305:22; Transcript 6082:08-6086:22) (United States District Court for the District of Colorado) ..... P. App. AE

Excerpt from Cross-Examination of M. Sears, dated April 10, 1997 (Aplt. App. 8831:07-8831:19; Transcript 6612:07-6612:19) (United States District Court for the District of Colorado) . . . . . P. App. AH

Excerpt from Direct Examination of W. Carey, dated April 14, 1997 (Aplt. App. 9163:11-9165:21; Transcript 6944:11-6946:21) (United States District Court for the District of Colorado) . . . . . P. App. AX

Excerpt from Plaintiffs' Closing Argument, dated April 22, 1997 (Aplt. App. 10163:23-10164:18; Transcript 7944:23-7945:18) (United States District Court for the District of Colorado) P. App. AI

Excerpt from Defendants' Closing Argument, dated April 23, 1997 (Aplt. App. 10254:06-10255:11; Transcript 8035:06-8036:11) (United States District Court for the District of Colorado) . . . . . P. App. AV

Judgment on Jury Verdicts, filed May 22, 1997 (United States District Court for the District of Colorado) . . . . . P. App. E

Order of U.S. Magistrate Judge Bruce D. Pringle Granting Plaintiffs-Appellees' Motion for Assistance in Connection with a Writ of Execution, filed September 25, 1997 (United States District Court for the District of Colorado) . . . . . P. App. D

Transcript of Oral Argument and Order of October 23, 1997, Denying Defendants' Post-Trial Motions (United States District Court for the District of Colorado) . . . . . P. App. C

Opinion of the United States Court of Appeals for the Tenth Circuit, filed April 28, 2000 (United States Court of Appeals for the Tenth Circuit) ..... P. App. B

Order of the United Court of Appeals for the Tenth Circuit Denying Petition for Panel Rehearing and Petition for Rehearing en banc, filed June 8, 2000 (United States Court of Appeals for the Tenth Circuit) ..... P. App. F

Order of the United Court of Appeals for the Tenth Circuit Granting Defendants-Appellants' Motion for a Stay of Mandate, filed June 20, 2000 (United States Court of Appeals for the Tenth Circuit) ..... P. App. A

APPENDIX A

Docket Entries for *United Int'l Holdings, Inc. et al. v. The Wharf (Holdings) Limited, et al.*, No. 94-CV-2560, U.S. District Court for the District of Colorado

U.S. District Court

U.S. District Court for the District of Colorado (Denver)

CIVIL DOCKET FOR CASE #:94CV-2560

United Intl Holdings, et al v. Wharf Holdings Ltd, et al

Filed: 11/10/94
Assigned to: Judge John L. Kane
Jury demand: Both
Demand: $0,000
Nature of Suit: 850
Lead Docket: None
Jurisdiction: Federal Question
Dkt# in other court: None
Cause: 15:78m(a) Securities Exchange Act

DATE	NUMBER	DOCKET ENTRY
11/10/94	1	COMPLAINT and Jury Demand
		* * *
1/17/95	15	Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to dismiss for lack of jurisdiction before Judge Edward W. Nottingham (yk) [Entry date 01/18/95]

DATE	NUMBER	DOCKET ENTRY
1/17/95	16	Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to dismiss fraud and fraud-based claims before Judge Edward W. Nottingham, or in alternative for more definitive statement before Judge Edward W. Nottingham (yk) [Entry date 01/18/95]
1/17/95	17	NOTICE of issues concerning law of a foreign country by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng (yk) [Entry date 01/18/95]
1/17/95	18	Motion by defendant Stephen Ng to dismiss promissory estoppel claim before Judge Edward W. Nottingham (yk) [Entry date 01/18/95]
1/17/95	19	AFFIDAVIT of Stephen Ng motion to dismiss promissory estoppel claim before Judge Edward W. Nottingham [18-1] (yk) [Entry date 01/18/95]
		* * *
2/15/95	25	RESPONSE by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to motion to dismiss promissory estoppel claim before Judge Edward W. Nottingham [18-1] (yk)

DATE	NUMBER	DOCKET ENTRY
2/15/95	26	RESPONSE by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to motion to dismiss for lack of jurisdiction before Judge Edward W. Nottingham [15-1] (yk)
2/15/95	27	RESPONSE by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to motion to dismiss fraud and fraud-based claims before Judge Edward W. Nottingham [16-1], motion for more definite statement before Judge Edward W. Nottingham [16-2] (yk)
		* * *
2/15/95	145	ORDER by Judge Wiley Y. Daniel granting deft's motion to amend answer to amended complaint [83-1] (cc: all counsel) ; entry date : 12/18/95 (gc) [Entry date 12/18/95]
		* * *
2/27/95	33	REPLY by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to response to motion to dismiss for lack of jurisdiction before Judge Edward W. Nottingham [15-1] (yk) [Entry date 02/28/95]

DATE	NUMBER	DOCKET ENTRY
2/27/95	34	REPLY by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to response to motion to dismiss fraud and fraud-based claims before Judge Edward W. Nottingham [16-1], motion for more definite statement before Judge Edward W. Nottingham [16-2] (yk) [Entry date 02/28/95]
2/27/95	35	REPLY by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to response to motion to dismiss promissory estoppel claim before Judge Edward W. Nottingham [18-1] (yk) [Entry date 02/28/95]
		* * *
3/14/95	37	STIPULATED PROTECTIVE ORDER by Judge Edward W. Nottingham: re: production of confidential material during discovery (cc: all counsel) (yk) [Entry date 03/15/95]
		* * *
3/27/95	39	AMENDED COMPLAINT [1-1] by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co; jury demand (yk) [Entry date 03/29/95]
		* * *

DATE	NUMBER	DOCKET ENTRY
4/13/95	43	Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to dismiss all fraud and fraud based claims in lst amended complaint before Judge Edward W. Nottingham (yk) [Entry date 04/14/95]
4/13/95	44	Motion by defendant Stephen Ng to dismiss plf amended promissory estoppel claim against def Ng individually before Judge Edward W. Nottingham (yk) [Entry date 04/14/95]
4/13/95	45	Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to dismiss amended complaint for lack of jurisdiction before Judge Edward W. Nottingham (yk) [Entry date 04/14/95]
		* * *
4/13/95	47	Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to dismiss based upon forum non conveniens before Judge Edward W. Nottingham (yk) [Entry date 04/14/95]

DATE	NUMBER	DOCKET ENTRY
4/18/95	48	COURTROOM MINUTES by Judge Edward W. Nottingham denying motion to compel arbitration of all claims in amended complaint [46-1], denying motion to dismiss amended complaint for lack of jurisdiction before Judge Edward W. Nottingham [45-1], denying motion to dismiss for lack of jurisdiction before Judge Edward W. Nottingham [15-1], denying motion to extend deadlines for amending pleadings, adding parties and designating non parties at fault [38-1], denying motion to dismiss plf amended promissory estoppel claim against def Ng individually before Judge Edward W. Nottingham [44-1], denying motion to dismiss fraud and fraud-based claims before Judge Edward W. Nottingham [16-1], denying motion for more definite statement before Judge Edward W. Nottingham [16-2] ; discovery ddl set 8/1/95 ; disp mtn ddl set 8/14/95 ; prepretrial conf held 4/18/95 ; pretrial conf set for 2:30 11/17/95, ; entry date : 4/18/95 (yk)

* * *

DATE	NUMBER	DOCKET ENTRY
4/18/95	49	ORDER by Judge Edward W. Nottingham denying motion to dismiss based upon forum non conveniens before Judge Edward W. Nottingham [47-1], denying motion to dismiss all fraud and fraud based claims in 1st amended complaint before Judge Edward W. Nottingham [43-1] (cc: all counsel); entry date: 4/20/95 (yk) [Entry date 04/20/95]
4/18/95	50	PRELIMINARY PRE-TRIAL ORDER by Judge Edward W. Nottingham jury trial estimated 4 weeks (cc: all counsel) (yk) [Entry date 04/20/95]
4/18/95	51	Second Amended ORDER by Judge Edward W. Nottingham; discovery ddl set 8/1/95; disp mtn ddl set 8/14/95; pretrial conf set for 2:30 11/17/95 (cc: all counsel); entry date: 4/20/95 (yk) [Entry date 04/20/95]
		* * *
5/2/95	54	ANSWER by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to amended complaint [39-1] (pa) [Entry date 05/03/95]
		* * *

DATE	NUMBER	DOCKET ENTRY
5/8/95	56	MOTION by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to stay pending appeal (pa) [Entry date 05/09/95]
		* * *
5/12/95	59	Case No. 95-1184 assigned by the Court of Appeals. [55-1] (gc) [Entry date 05/15/95]
		* * *
8/14/95	83	MOTION by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to amend answer to amended complaint (yk) [Entry date 08/15/95]
8/14/95	--	Tendered amended answer submitted by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng motion to amend answer to amended complaint [83-1] (yk) [Entry date 08/15/95]
8/14/95	84	First Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham (yk) [Entry date 08/15/95]

DATE	NUMBER	DOCKET ENTRY
8/14/95	85	BRIEF by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng in support of motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1] (yk) [Entry date 08/15/95]
8/14/95	86	Third Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham (yk) [Entry date 08/15/95]
8/14/95	87	BRIEF by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng in support of motion for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham [86-1] (yk) [Entry date 08/15/95]

DATE	NUMBER	DOCKET ENTRY
8/14/95	88	Fourth Motion by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham (yk) [Entry date 08/15/95]
8/14/95	89	BRIEF by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng in support of motion for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham [88-1] (yk) [Entry date 08/15/95]
8/14/95	90	Supporting Documents (EXHIBITS) re: motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1] (IN BOUND VOLUME) (yk) [Entry date 08/15/95]
8/15/95	91	MOTION by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng for leave to file instanter second motion for summary jgm on pla's contract-based claims (jc)

DATE	NUMBER	DOCKET ENTRY
8/15/95	92	Second MOTION by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng for summary judgment on pla's contract-based claims (jc)
8/15/95	93	BRIEF by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng in support of second motion for summary judgment on pla's contract-based claims [92-1] (jc)
8/18/95	94	MINUTE ORDER: by Judge Edward W. Nottingham Case reassigned to Judge Wiley Y. Daniel (cc: all counsel); entry date: 8/18/95 (yk)
8/22/95	95	RESPONSE (Opposition) by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to dfts' motion to amend answer to amended complaint [83-1] (lm) [Entry date 08/23/95]
		* * *
9/22/95	104	Combined BRIEF (Memorandum) by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co in opposition to dfts' 4 motions for summary judgment [92-1], [88-1], [86-1], [84-1] (lm) [Entry date 09/25/95]

DATE	NUMBER	DOCKET ENTRY
9/22/95	105	STATEMENT (Submission) by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co of evidence cited in combined memorandum in opp [104-1] to dfts' Wharf 4 mtns for summary judgments [92-1], [86-1], [88-1], [84-1] (lm) [Entry date 09/25/95]
9/22/95	106	EXHIBITS (Tab 29, 32, 33, 41, 40, 34, 45, 48, 52, 87, 81, 78, 75, 74, 72, 71, 68, 66, 64, 63, 62) statement [105-1] to plas' combined memorandum in opp to [104-1] dfts' 4 mtns for summary judgment [92-1], [88-1], [86-1], [84-1] (confidential & seal pursuant to protective order - placed w/sealed documents) (lm) [Entry date 09/25/95]
		* * *
10/18/95	114	Letter re attached memo in opp to Wharf's 4 mtns for sum jgm AMENDMENT (Corrects) pgs with typos by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to 9/22/95 opposition brief [104-1] (lm) [Entry date 10/23/95]
		* * *
10/20/95	117	Combined REPLY Brief by defendants in support of 4 sum jgm mtns [92-1], [88-1], [86-1], [84-1] (lm) [Entry date 10/23/95]

DATE	NUMBER	DOCKET ENTRY
10/20/95	118	Tendered Supplemental APPENDIX filed by defendants supporting authorities, documents, testimony & other evidence to which they refer in their combined reply brief in support of 4 mtns for sum jgm re [117-1] (lm) [Entry date 10/23/95]
		* * *
11/7/95	127	Submission of supplemental AFFIDAVIT of Bernard G. Dvorak in opp to Wharf's motions for summary judgment [92-1], [88-1], [86-1], [84-1] (lm) [Entry date 11/08/95]
		* * *
11/17/95	133	COURTROOM MINUTES by Judge Wiley Y. Daniel; pretrial conf held 11/7/95; revised pto ddl set for 2/20/96; status report re settlement ddl set for 2/20/96; pla to file a pleading outlining which mtns are now considered moot; csl to obtain dates for trial and final trial prep conf; csl to file jt statement re claims being withdrawn; granting motion to amend answer to amended complaint [83-1] (finding the motion to file brf in opp to dft's mtn to amd [100-1] moot, finding the motion for leave to file reply in support of dfts' mtn for lv to amd answer [97-1] moot); entry date: 11/21/95 Court Reporter: Stafford (lm) [Entry date 11/21/95]

DATE	NUMBER	DOCKET ENTRY
11/17/95	135	AMENDED ANSWER [54-1] by defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng to amended complaint (lm) [Entry date 11/21/95]
		* * *
11/21/95	139	NOTICE by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co of withdrawal of following claims that were pleaded in the amended cmp: civil conspiracy & the following 2 claims against dft Wharf Cable Limited: 1. promissory estoppel; and fraud (this lvs Wharf Cable as a dft to the unjust enrichment claim only) and Csls' jt statement re effect of withdrawal of these claims (lm) [Entry date 11/27/95]
11/21/95	140	Notice of Withdrawal of certain claims and JT STATEMENT by plaintiffs re the effect of this withdrawal moots dfts' mcts for sum jgm re the conspiracy claim and the fraud and promissory estoppel claims against Wharf Cable, all other claims in the amended cmp, as well as dfts' sum jgm mtns directed to those claims, remain pending re [92-1], [88-1], [86-1], [84-1] (lm) [Entry date 11/27/95]

DATE	NUMBER	DOCKET ENTRY
11/22/95	137	MINUTE ORDER: by Judge Wiley Y. Daniel: plas' suggestion of mootness of certain discovery mtns is granted [134-1] is granted and the following mtns are denied: pla's motion for protective order [64-1], dfts' motion for protective order [70-1], dfts' req for immediate pretrial conf [73-1], and dfts' motion to compel [77-1] (cc: all counsel); entry date: 11/24/95 (lm) [Entry date 11/24/95]
		* * *
3/4/96	150	PRE-TRIAL ORDER by Judge Wiley Y. Daniel: ptc held 11/17/95; pending mtns: 8/14/95 dfts' mtns for sum jgm; plas' mtn to compel filed 2/28/96; discovery has been completed; case will be trial to a jury & is set for 1 mo trial commencing 2/17/97 at 9:00; final trial prep conf set 1/17/97 at 4:30 (cc: all counsel) (lm) [Entry date 03/05/96]
		* * *

DATE	NUMBER	DOCKET ENTRY
4/15/96	157	RESPONSE by plaintiffs to reply re: submission of excerpts from Norman depo in opposition to Wharf's motion for sum jgm [155-1], motion for summary judgment on pla's contract-based claims [92-1], motion for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham [88-1], minutes [129-2], motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1] (gc)
		* * *
5/9/96	160	NOTIFICATION from Court of Appeals regarding Petition for Writ of Certiorari Filed with US Supreme Court on 4/12/96 Case No 95-1646 (re: appeal [55-1] (gc) [Entry date 05/10/96]
		* * *
7/17/96	164	NOTIFICATION from Court of Appeals regarding Petition for Writ of Certiorari denying petition on 6/17/96 re: appeal [55-1] (gc) [Entry date 07/18/96]
		* * *
8/5/96	166	MOTION by defendants to set date for oral argument on pending mtns for sum jgm and certification (lm) [Entry date 08/06/96]

DATE	NUMBER	DOCKET ENTRY
		* * *
9/25/96	173	MINUTE ORDER: by Judge Wiley Y. Daniel Case reassigned to Judge Walker D. Miller (cc: all counsel); entry date: 9/25/96 (yk)
10/9/96	175	ORDER by Judge John L. Kane case no is changed to 96-K-2560 and jury trial date 2/17/97 is confirmed Case reassigned to Judge John L. Kane, and; status conf set for 8:30 10/18/96 all trial cnsl to appear at status conf to advise trial judge of status of action and determine other matters (cc: all counsel); entry date: 10/15/96 (jj) [Entry date 10/15/96]
		* * *

DATE	NUMBER	DOCKET ENTRY
10/22/96	179	MINUTE ORDER: by Judge John L. Kane granting motion to set date for oral argument on pending mtns for sum jgm [166-1], setting hearing on motion for summary judgment on pla's contract-based claims [92-1] 10:00 11/22/96, setting hearing on motion for summary judgment on Common Law Tort Claims, Counts IX, X, XII before Judge Edward W. Nottingham [88-1] 10:00 11/22/96, setting hearing on motion for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham [86-1] 10:00 11/22/96, setting hearing on motion for summary judgment on foreign law and forum issues (all counts) before Edward W. Nottingham [84-1] 10:00 (all counts) before Judge Edward W. Nottingham [84-1] 10:00 11/22/96 (cc: all counsel); entry date: 10/23/96 (jj) [Entry date 10/23/96]

DATE	NUMBER	DOCKET ENTRY
10/28/96	180	STATEMENT of Listing of Materials relevant to Resolution of Summary Jgm Motions by plaintiff United Intl Holdings motion for summary judgment on pla's contract-based claims [92-1], motion for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham [88-1], motion for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham [86-1], motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1] (jj) [Entry date 10/30/96]

DATE	NUMBER	DOCKET ENTRY
11/22/96	181	COURTROOM MINUTES by Judge John L. Kane taking under advisement on 5/22/97 the motion for summary judgment on pla's contract-based claims [92-1], taking under advisement on 5/22/97 the motion for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham [88-1], taking under advisement on the motion for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham [86-1], taking under advisement on 5/22/97 the motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1]; jury trial reset for 9:00 2/18/97; entry date: 11/25/96 Court Reporter: Jeannette Gallardo, ECR (jj) [Entry date 11/25/96]

* * *

DATE	NUMBER	DOCKET ENTRY
11/25/96	183	MEMORANDUM, OPINION, AND ORDER: by Judge L. Kane denying motion for summary judgment on pla's contract-based claims [92-1], denying motion for summary judgment on Common Law Tort Claims, Counts IX, X, XI, XII before Judge Edward W. Nottingham [88-1], denying motion for summary judgment on Securities Law Claims (Counts IV, V, VI, VII, VIII before Judge Edward W. Nottingham [86-1], denying motion for summary judgment on foreign law and forum issues (all counts) before Judge Edward W. Nottingham [84-1] (cc: all counsel); entry date: 11/26/96 (jj)
		* * *
12/6/96	189	OBJECTIONS by defendant to trial exhibits (yk)
12/6/96	190	OBJECTIONS by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to trial exhibits (yk) [Entry date 12/09/96]
		* * *
12/30/96	--	Tendered Proposed Jury Instructions submitted by plaintiff, defendants in black binder (both binders routed to Judge's chambers) (jj) [Entry date 12/31/96]

DATE	NUMBER	DOCKET ENTRY
12/30/96	--	Tendered Parties Joint Submission of their respective Indices of Proposed Jury Instructions submitted by plaintiff, defendant document tendered [0-0] (with 2 computer disks, all pleadings routed to chambers) (jj) [Entry date 12/31/96]
12/30/96	--	Tendered Brief re: proposed jury instr submitted by plaintiff document tendered [0-0] (jj) [Entry date 12/31/96]
12/30/96	213	Memorandum of Law BRIEF by defendant in support of Proposed Jury Instructions and Verdict Forms (jj) [Entry date 01/03/97]
12/31/96	212	TRANSCRIPT of proceedings of Oral Argument on S/J Motions partial transcript of proceedings on 11/22/96 at 10:00 am before Judge Kane, Jr. (1-45 pages) Prepared By: ECR (jj) [Entry date 01/03/97]
		* * *
1/10/97	233	COURTROOM MINUTES by Judge John L. Kane; pretrial conf held 1/10/97; pretrial conf and jury instr continued for 1/22/97; cnsl to submit final stip re: designation of depo by 1/22/97, cnsl to submit mot in limine by 1/22/97; entry date 1/13/97 Court Reporter: Bobbi Lloyd (jj) [Entry date 01/13/97]

DATE	NUMBER	DOCKET ENTRY
		* * *
1/22/97	247	Witness list submitted by plaintiff (jj)
		* * *
2/4/97	273	COURTROOM MINUTES by Judge John L. Kane granting motion in limine re: exclusion of evidence of offers to compromise [242-1], granting motion in limine re: preclude trial exam that calls for invocation of atty-clt priv before jury [244-1], granting motion in limine re: exclusion of evidence re: collateral legal issues pertaining to Inv Co Act 1940 [245-1]; pretrial conf set for 1:30 2/12/97; any additional motions must be filed by 5:00 pm by 2/4/97 any further must have permission; entry date: 2/5/97 Court Reporter: Jeannette Gallardo, ECR (jj)
		* * *

DATE	NUMBER	DOCKET ENTRY
2/12/97	293	COURTROOM MINUTES by Judge John L. Kane terminating motion in limine re: exclude opin by Carey re: legal matters and whether prudent businessman would have exercised option UIH granted [252-1], terminating motion in limine re: exclude opinions of expert Carey re: minority and liq discts [250-1], terminating motion in limine re: exclude new exp opinions and exp test of 1995 rpts and depo [249-1], terminating motion in limine re: exclude certain opinion test of Liebst and Large [248-1], granting motion in limine to exclude evidence re: unjust enrichment and promissory estoppel from presented to jury [269-1], granting motion in limine re: mitigation of damages [251-1], denying motion in limine to preclude testimony and/or evidence [241-1], denying [262-1], denying brief [283-1]; pretrial conf held 2/12/97; entry date: 2/13/97 Court Reporter: Deb Stafford (jj) [Entry date 02/13/97]
		* * *
2/13/97	303	Notice of Filing of Joint EXHIBIT list by plaintiff, defendant (dc) [Entry date 02/14/97]
		* * *

DATE	NUMBER	DOCKET ENTRY
2/14/97	301	OBJECTIONS by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co to Jury Instructs (dc)
		* * *
2/14/97	305	Supplemental Brief of Three Suggested Changes of Court's Proposed Jury Instructions (NOTICE) by defendants (dc)
2/18/97	309	Updated and Order Witness list submitted by defendant (jj) [Entry date 02/21/97]
2/18/97	310	Updated Witness list submitted by plaintiff UIH Asia Invst Co (jj) [Entry date 02/21/97]
2/18/97	311	COURTROOM MINUTES Jury Trial 1st day by Judge John L. Kane (jury list attached and glossary); entry date: 2/21/97 Court Reporter: Jeannette Gallardo, ECR (jj) [Entry date 02/21/97]
2/19/97	306	TRANSCRIPT of proceedings of Trial to Jury Day 1 (1-228 pages) before Judge Kane held on 2/18/97 at 9:07 am Prepared By: ECR (jj)
		* * *
4/9/97	372	Request (MOTION) by plaintiffs for order for addl jury instr (jj)
		* * *

DATE	NUMBER	DOCKET ENTRY
4/10/97	379	Memorandum (BRIEF) FILED by defendants in support of dfts proposed verdict form (jj) [Entry date 04/11/97]
4/10/97	380	OBJECTIONS by defendants to plas proposed jury instruction no. 37A (jj) [Entry date 04/11/97]
		* * *
4/11/97	--	Tendered Proposed Additions to Verdict submitted by defendant (Routed to Chambers) (jj) [Entry date 04/14/97]
4/11/97	385	Memorandum (BRIEF) FILED by plaintiffs re: verdict forms and revised instr re: multiple recovery prohibited (jj) [Entry date 04/14/97]
		* * *
4/16/97	393	Memorandum (BRIEF) FILED by Wharf Holdings Ltd, Wharf Comm Invst, Wharf Cable Limited document tendered [0-0] in support of its proposed jury instr (jj) [Entry date 04/18/97]
		* * *
4/17/97	394	Revised (AMENDMENT) by Wharf Holdings Ltd, Wharf Comm Invst, Wharf Cable Limited to Verdict form for choice of law issue (jj) [Entry date 04/18/97]
		* * *

DATE	NUMBER	DOCKET ENTRY
4/18/97	398	Offers of Proof (STATEMENT) by defendants (jj) [Entry date 04/21/97]
		* * *
4/21/97	400	REPLY by plaintiffs document tendered [0-0] in support of plas proposed jury instr 37A (jj)
4/21/97	401	RESPONSE by plaintiff to document tendered [0-0] to dfts memo in support of its proposed jury instr (jj)
4/21/97	402	RESPONSE by plaintiff to document tendered [0-0] to dfts memo in support of dfts proposed verdict form (jj)
		* * *
4/21/97	404	Bench Ruling (ORDER) on Jury Instr by Judge John L. Kane (cc: all counsel); entry date: 4/24/97 (jj) [Entry date 04/24/97]
		* * *

DATE	NUMBER	DOCKET ENTRY
4/29/97	416	Jury VERDICT Form 1 -- Dft The Wharf (Holdings) Limited for plaintiff against defendant Wharf Holdings Ltd on deceit based on fraud-damages to UIH $67,000,000, exemplary to UIH $58,500,000; negligent misrep-damages $8,100,000; breach of contract-damages $67,000,000; breach of fid duty-damages $67,000,000 and exemplary $58,5000,000; securities fraud-damages $67,000,000 entry date; 4//30/97 (jj) [Entry date 04/30/97] [Edit date 05/27/97]
4/29/97	417	Jury VERDICT Form 2-dft Wharf Comm Inv Ltd for plaintiff against defendant Wharf Comm Invst; deceit based on fraud-damages $67,000,000; negligent misrepresentation-damages $8,100,000; breach of contract-damages $67,000,000; breach of fiduciary duty-damages $67,000,000; security fraud-damages $67,000,000 entry date: 4/30/97 (jj) [Entry date 04/30/97] [Edit date 05/27/97]
4/29/97	418	Jury VERDICT Form 3-dft Stephen Ng for plaintiff against defendant Stephen Ng; deceit based on fraud-damages $67,000,000; security fraud-damages $67,000,000 entry date: 4/30/97 (jj) [Entry date 04/30/97] [Edit date 05/27/97]

DATE	NUMBER	DOCKET ENTRY
4/29/97	419	Jury VERDICT Form 4 -- Controlling Person Liability for plaintiff against defendant Wharf Holdings Ltd, defendant Wharf Comm Invst, defendant Wharf Cable Limited, defendant Stephen Ng; entry date: 4/30/97 (jj) [Entry date 04/30/97] [Edit date 05/27/97]
4/29/97	421	COURTROOM MINUTES 48th Day Jury Trial by Judge John L. Kane; verdicts recd and copy attached, jury instr, exh listings in exh rm in 3 black p3 ring ntbks, plas cnsl to prepare proposed jgm order and formal minute order to follow; entry date: 4/30/97 Court Reporter: Jeannette Gallardo, ECr (jj) [Entry date 04/30/97]
		* * *
4/30/97	426	MINUTE ORDER: by Judge John L. Kane plas to submit proposed order of jgm on jury verdicts by 5/9/97 (cc: all counsel); entry date: 4/30/97 (jj)
5/1/97	427	ORDER by Judge John L. Kane dismissing plas equitable claims (cc: all counsel); entry date: 5/5/97 (jj) [Entry date 05/05/97]
5/6/97	428	MOTION by plaintiffs to alter judgment, and to amend, or to vacate order of 5/1/97 (jj) [Entry date 05/09/97]

DATE	NUMBER	DOCKET ENTRY
5/7/97	429	MOTION by plaintiffs to entry of judgment on jury verdicts (jj) [Entry date 05/09/97]
5/9/97	430	OBJECTIONS by defendants to proposed jgm
5/12/97	431	ORDER by Judge L. Kane regarding [427-1] order, denying motion to alter judgment [428-1], denying motion to amend [428-2], denying motion to vacate order of 5/1/97 [428-3] plas equitable claims dism w/prejudice and jgm enter in favor of dfts and against plas on plas claims for promissory estoppel and unjust enrichment (cc: all counsel); entry date: 5/16/97 (jj) [Entry date 05/16/97]
5/13/97	432	OBJECTIONS by defendants to motion to alter judgment [428-1], motion to amend [428-2], motion to vacate order of 5/1/97 [428-3] (jj) [Entry date 05/16/97]
5/13/97	433	RESPONSE by plaintiffs to dfts obj to plas proposed jgm (jj) [Entry date 05/16/97]

DATE	NUMBER	DOCKET ENTRY
5/15/97	434	ORDER by Judge John L. Kane plas to submit revised form of jgm by 5/21/97 and plas submit proposed fee award to dfts by 6/20/97 if after 30 days no agreement then we will appoint special master to issue recomm and amt and allocation of his own fee, once jgm entered on jury verdicts case will be deemed closed and time for appeal shall begin, amt of UIH atty fees is collateral matter which ct will retain juris even after appeal (cc: all counsel); entry date: 5/16/97 (jj) [Entry date 05/16/97]
5/16/97	435	Submission of revised jgm on jury verdict (STATEMENT) by plaintiff order [434-1] (jj)
5/20/97	436	OBJECTIONS by dfts Wharf Holdings Ltd, Wharf Comm Invst, Wharf Cable Limited, Stephen Ng to plas' calculation of amt of prejgm interest in plas' proposed jgm re statement [435-1] (tp)
5/20/97	437	Acquiescence in def objection to plf calculation (STATEMENT) by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co (yk) [Entry date 05/23/97]
5/22/97	438	JUDGMENT on Verdicts: by Judge John L. Kane, Jr. jgm entered for UIH against def Wharf Holdings Ltd on deceit based on fraud compensatory

DATE	NUMBER	DOCKET ENTRY
		damages of $67 million, exemplary damages of 58.5 million; on negligent misrepresentation for 8.1 million; breach on contract compensatory damages of 67 million; breach of fiduciary duty comp damages 67 million, exemplary damages 58.5 million; violation of Rule 10b-5 SEC Act comp damages of 67 million; against Wharf Communications Investment deceit based on fraud comp damages of 67 million; negligent misrepresentation comp damages of 8.1 million; breach of contract comp damages 67 million; violation of Rule 10b-5 SEC Act comp damages 67 million; against Stephen Ng deceit based on fraud comp damages $67 million; negligent misrepresentation comp damages 8.1 million; violation of Rule 10b-5 SEC Act comp damages of 67 million; jgm entered for UIH against Wharf Holdings Ltd for $125.5 million; against WCIL for $67 million; against Stephen Ng for $67 million; UIH awarded prejudgment interest at 8% from 10/31/92 on $67 million compensatory damages; post judgment interest to accrue at 6.06% from date of judgment; UIH entitled to costs and atty fees to be considered separately to Bill of Costs; UIH to receive costs to be filed within 10 days (cc: all

DATE	NUMBER	DOCKET ENTRY
		counsel); entry date: 5/23/97 (yk) [Entry date 05/23/97]
6/4/97	439	MOTION by plaintiff for forthwith order for leave immediately to register jgm, and if necessary for relief from stay (jj) [Entry date 06/06/97]
6/4/97	440	MINUTE ORDER: by Judge John L. Kane granting motion for forthwith order for leave immediately to register jgm [439-1], granting motion from stay [439-2] (cc: all counsel); entry date: 6/6/97 (jj) [Entry date 06/06/97]
		* * *
6/5/97	443	NOTICE of Filing by defendants of Post-Trial Mot for Jgm as Matter of Law, for a New Trial and for Other Relief (jj) [Entry date 06/06/97]
6/5/97	444	Post-Trial MOTION by defendants for judgment as a matter of law, and in the alternative for new trial, or in the alternative to amend and disallow or reduce jury awards of exemlary and compensatory damages and amd 5/21/97 jgm on jury verdicts (jj) [Entry date 06/06/97]

DATE	NUMBER	DOCKET ENTRY
6/6/97	445	MINUTE ORDER: by Judge John L. Kane regarding [444-1] motion for judgment as a matter of law, regarding [444-2] motion for new trial, regarding [444-3] motion to amend and disallow or reduce jury awards of exemlary and compensatory damages and amd 5/21/97 jgm on jury verdicts; response due 6/27/97 and rply due 7/11/97 (cc: all counsel); entry date: 6/12/97 (jj) [Entry date 06/12/97]
		* * *
6/27/97	451	BRIEF by plaintiff United Intl Holdings, plaintiff UIH Asia Invst Co in opposition to motion for judgment as a matter of law [444-1], motion for new trial [444-2], motion to amend and disallow or reduce jury awards of exemlary and compensatory damages and amd 5/21/97 jgm on jury verdicts [444-3] (jj) [Entry date 06/30/97]
		* * *
7/25/97	467	REPLY Memorandum by Wharf Holdings Ltd, Wharf Comm Invst, Wharf Cable Limited to response to motion for judgment as a matter of law [444-1], motion for new trial [444-2] (jj) [Entry date 07/28/97]

DATE	NUMBER	DOCKET ENTRY
7/25/97	468	APPENDIX to Reply Memorandum filed by Wharf Holdings Ltd, Wharf Comm Invst, Wharf Cable Limited motion for judgment as a matter of law [444-1], motion for new trial [444-2] (jj) [Entry date 07/8/97]
		* * *
7/30/97	470	MOTION by plaintiff for leave to file 6 page brf in opp to mtn for new trial, etc. (ss)
7/31/97	471	MINUTE ORDER: by Judge John L. Kane granting motion for leave to file 6 page brf in opp to mtn for new trial, etc. [470-1]; no further briefs will be considered (cc: all counsel); entry date: 7/31/97 (ss)
		* * *
8/8/97	477	Response BRIEF by plaintiff in opposition to motion for judgment as matter of law [444-1], motion for new trial [444-2], motion to amend and disallow or reduce jury awards of exemlary and compensatory damages and amd 5/21/97 jgm on jury verdicts [444-3] (ss)
		* * *

DATE	NUMBER	DOCKET ENTRY
9/25/97	486	MINUTE ORDER: by Judge John L. Kane granting motion for oral argument [483-1]; setting hearing on motion for judgment as a matter of law [444-1], motion for new trial [444-2], & motion to amend and disallow or reduce jury awards of exemlary and compensatory damages and amd 5/21/97 jgm on jury verdicts [444-3] 9:00 10/23/97 (cc: all counsel); entry date: 9/26/97 (ss) [Entry date 09/26/97]
9/25/97	487	ORDER by Magistrate Judge Bruce D. Pringle granting motion for order for assistance with writ of execution [463-1]; certain assets to be turned over to the Clerk of the Court by 10/15/97; Wharf may file claim of exemption by 10/15/97 (cc: all counsel); entry date: 9/26/97 (ss) [Entry date 09/26/97]

* * *

DATE	NUMBER	DOCKET ENTRY
10/23/97	495	COURTROOM MINUTES by Judge John L. Kane denying mtn for jgm as a matter of law [444-1]; denying mtn to amd & disallow or reduce jury awards of exemplary & compensatory damages & amd 5/21/97 jgm on jury verdicts [444-3]; granting mtn to stay for a period of 10 days [488-2] & denying [488-1] objections to ord; in court mtns hrg held 10/23/97; entry date: 11/5/97; Court Reporter: Jeannette G. (ss) [Entry date 11/05/97] [Edit date 11/05/97]
10/24/97	498	TRANSCRIPT of 10/23/97 proceedings of oral argument (pages 1-80) Prepared By: Federal Reporting (ss)
		* * *
11/4/97	499	NOTICE OF APPEAL by defendants in re: judgment [438-1] of 5/22/97 and minutes [495-2] of 10/23/97; Notice of transcript order form due 11/14/97; Notice mailed to all counsel on 11/5/97 (gc) [Entry date 11/05/97]
		* * *
11/7/97	502	Case No. 97-1421 assigned by the Court of Appeals. [499-1] (gc) [Entry date 11/10/97]
		* * *

DATE	NUMBER	DOCKET ENTRY
12/4/97	521	COURTROOM MINUTES by Judge John L. Kane re: [512-1] order to show cause & [500-1] mtn for order requiring dft Wharf to show cause why it shouldn't be held in contempt: ct finds dft in contempt; formal order to issue; order to show cause ddl satisfied 12/4/97; in court hrg continued to 9:00 12/22/97; transcript ordered; entry date: 12/4/97: Court Reporter: Deb Stafford (ss)
		* * *
12/17/97	524	ORDER by Judge John L. Kane pursuant to [521-2] minutes re contempt: sanction imposed on dfts 12/4/97 is reiterated; doubling of post-jgm interest began to accrue on that day; addl hrg re contempt set for 12/22/97 at 9:00 (cc: all counsel); entry date: 12/19/97 (ss) [Entry date 12/19/97]
		* * *
12/23/97	531	ORDER by Judge John L. Kane regarding [528-2] minutes: Wharf barred from seeking equitable relief as long as it remains in contempt, prohibited from transacting business w/banks & other financial institutions; interest continues to double; UIH awarded atty fees (cc; all counsel); entry date: 12/23/97 (ss)
		* * *

DATE	NUMBER	DOCKET ENTRY
12/31/97	535	NOTICE OF APPEAL by defendants in re: minutes [521-2] of 12/4/97, order [524-1] of 12/17/97 and order [531-1] of 12/23/97; Notice of transcript order form due 1/12/98; Notice mailed to all counsel on 12/31/97 (gc)
		* * *
1/26/98	550	MOTION by defendants pursuant to FRCP 62(d) to stay enforcement of jgm pending appeal and for order approving supersedeas bond (ss) [Entry date 01/28/98]
1/27/98	551	Amended MOTION by defendants pursuant to FRCP 62(d) to stay enforcement of jgm pending appeal and for order approving supersedeas bond (no original; FAX copy) (ss) [Entry date 01/28/98]

DATE	NUMBER	DOCKET ENTRY
1/27/98	552	ORDER by Judge John L. Kane granting motion to stay enforcement of jgm (pending appeal) pursuant to FRCP 62(d) [551-1] as set forth in this order; granting motion for order approving supersedeas bond [551-2] attached as exhibit A; Wharf shall post bond as set forth in this order; termination of contempt fines contemplated by courts 1/12/98 [547-1] order is confirmed & amount is fixed at $944,233.04; courts 10/23 turnover order [495-2] (minutes) is vacated; coercive sanctions imposed as set forth in courts 12/23 [531-1] order are termed; (cc: all counsel); entry date: 1/28/98 (ss) [Entry date 01/28/98]
1/28/98	553	NOTICE by defendants of posting supersedeas bond pursuant to this courts orders of 1/12 & 1/27/98 (ss)
1/28/98	554	Supersedeas BOND in amount of $173,500,000.00, Bond No. 19-22-02 filed by dfts Wharf Holdings Ltd, Wharf Comm Invst & Stephen Ng (ss)
		* * *
9/21/00	592	NOTIFICATION from Court of Appeals regarding Petition for Writ of Certiorari Filed in US Supreme Court on 9/5/00 Case No. 00-347 (re appeal [535-1], (re appeal [499-1] (lg) [Entry date 09/22/00]

APPENDIX B

Docket Entries for *The Wharf (Holdings) Limited, et al. v. United Int'l Holdings, Inc.*, No. 97-1421, United States Court of Appeals for the Tenth Circuit

U.S. Court of Appeals for the Tenth Circuit

CIVIL DOCKET FOR CASE #: 97-1421

United Intl Holdings, et al v. Wharf (Holdings), et al

Filed: 11/7/97
Nature of Suit: 3850
Appeal from U.S. District Court for the District of Colorado

Date	Description
11/7/97	[1082882] Civil case docketed. Preliminary record filed. DATE RECEIVED: 11/5/97 Transcript order form due 11/17/97 for Charlotte Hoard pursuant to R.42.1 Docketing statement due 11/17/97 for Stephen Ng, for wharf Cable Limited, for Wharf Communications, for Wharf (Holdings), for UIH ASIA, for United Intl Holdings (hrs) [97-1421]
11/10/97	[1083136] Appellant's motion filed by Appellant Wharf (Holdings), Appellant Wharf Communications, Appellant Wharf Cable Limited, Appellant Stephen Ng for stay pending appeal [97-1421]. Original and 3 copies c/s: y (hrs) [97-1421]
11/13/97	[1083609] Appellee's response to the appellant's motion for emergency saty, filed by United Intl Holdings, UIH ASIA Original and 3 copies. c/s: y (hrs) [97-1421]
11/14/97	[1084095] Appellant's motion for stay submitted to panel. (nak) [97-1421]

Date	Description
11/14/97	[1084119] Order filed by Judge(s) Anderson, Ebel denying Appellant/Petitioner motion for stay pending of appeal [1083136-1] Parties served by mail. (hrs) [97-1421]
11/17/97	[1084804] Notice of appearance filed by Paul Michael Dodyk as attorney for Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng. CERT. OF INTERESTED PARTIES (y/n): y (nak) [97-1421]
	* * *
1/17/97	[1084808] Notice of appearance filed by Scott R. Bauer as attorney for Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng. CERT. OF INTERESTED PARTIES (y/n): y (nak) [97-1421]
11/17/97	[1084812] Docketing statement filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng. Original and 4 copies. c/s: y (nak) [97-1421]
11/17/97	[1085390] Notice of appearance filed by Steven Finizio, Louis R. Cohen, Jeffrey A. Chase and David Bruce Wilson as attorneys for United Intl Holdings and UIH ASIA. CERT. OF INTERESTED PARTIES (y/n): y (afw) [97-1421]
	* * *
11/24/97	[1087082] Designation of record filed by Appellee UIH ASIA. Original and 2 copies. [97-1421] (fg) [97-1421]
	* * *

Date	Description
1/16/98	[1100352] Notice of appearance filed by Martin Thomas Tully and William Robert Jentes in 98-1002, and 97-1421 as attorneys for Wharf (Holdings), Wharf Communications, Wharf Cable Limited and Stephen Ng in 98-1002 and 97-1421. CERT. OF INTERESTED PARTIES (y/n): n (afw) [97-1421 98-1002]
1/16/98	[1100813] Filed notice of record is complete 1/16/98. Appellant's brief and appendix due 2/25/98 for Stephen Ng, for Wharf Cable Limited, for Wharf Communications, for Wharf (Holdings) in 97-1421, in 98-1002. (hrs) [97-1421 98-1002]
	* * *
1/29/98	[1103328] Notice of appearance filed by James Calfee Munson as attorney for Wharf (Holdings, Wharf Communications, Wharf Cable Limited, and Stephen Ng in 98-1002 and 97-1421. CERT. OF INTERESTED PARTIES (y/n): n (afw) [97-1421 98-1002]
	* * *
2/20/98	[1108205] Order filed by Judges Porfilio and Briscoe granting Appellants' motion to extend time to file apet brief and denying Appellants' motion to file an oversize brief. [1106218-2] [1106218-1] A/Pet brief and appendix due 4/2/98 for Stephen Ng, Wharf Cable Limited, Wharf Communications and Wharf (Holdings) in 97-1421 and 98-1002. [1106218-2] THE COURT WILL NOT GRANT ADDITIONAL EXTENSIONS. Parties served by mail. (afw) [97-1421 98-1002]
	* * *

Date	Description
4/3/98	[1119558] Brief filed by Amicus Curiae Product Liability in 97-1421 and 98-1002. Original and 7 copies. c/s: y. (nak) [97-1421 98-1002]
4/3/98	[1119713] Appellant's brief filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421. Original and 7 copies. c/s: y. Served on 4/2/98 Oral argument? y., Appendix filed, VOLs 1-XVII. Original and 1 appendix copy. Appendix Pages: 10475 (hrs) [97-1421]
4/3/98	[1119718] Appellant's brief filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421. Original and 7 copies. c/s: y. Served on 4/2/98 Oral argument? y., Appendix filed, VOLs 1-XVII. Original and 1 appendix copy. Appendix Pages: 10475 Appellee's brief due 5/5/98 for UIH ASIA, for United Intl Holdings. (hrs) [97-1421]
4/3/98	[1119719] Addendum to brief filed by Appellants Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421. Original and 1 copies. c/s: y (hrs) [97-1421]
4/3/98	[1119731] Appellant's motion filed by Appellants' Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421 to supplement the record on appeal. Original and 3 copies. c/s: y. (hrs) [97-1421]
4/3/98	[1237493] Oversized record filed. Record can be located at Section: CC Shelf: 4 and 5. (ds) [97-1421]

* * *

Date	Description
4/13/97	[1121825] Order filed by Judge(s) Porfilio, Briscoe granting appellee motion to extend time to file eres brief [1120567-1] until 6/2/98 for UIH ASIA in 98-1002, for United Intl Holding in 98-1002, granting Appellee motion to file an oversize brief [1120567-2] in 97-1421, 98-1002. Parties served by mail. (hrs) [97-1421 98-1002]
4/13/98	[1122155] Appellee's response filed by United Intl Holdings and UIH ASIA in 97-1421 to ordered response. Original and 3 copies. c/s: y (nak) [97-1421]
4/14/98	[1122522] Response filed by United Intl Holdings and UIH ASIA in 97-1421 to appellant's motion to modify the record on appeal [1122155-1] submitted to panel. (nak) [97-1421]
	* * *
6/2/98	[1135864] Appellee's brief filed by United Intl Holdings & UIH ASIA in 97-1421. Original and 7 copies. c/s: y. Served on 6/2/98. Oral Argument? y. Appendix filed. Original and 1 appendix copy. Appendix Pages: 964. Appellant's optional reply brief due 6/19/98 for Stephen Ng, for Wharf Cable Limited, for Wharf Communications, for Wharf (Holdings). (pdw) [97-1421]
6/8/98	[1136992] Appellants' motion filed by Appellants Wharf (Holdings), Wharf Communications, Wharf Cable Limited and Stephen Ng in 97-1421, and 98-1002 to extend time to file a reply brief until 6/30/98. [97-1421, 98-1002] Original and 3 copies. c/s: y (afw) [97-1421 98-1002]

Date	Description
	* * *
6/30/98	[1143270] Appellant's motion filed by Appellant Wharf (Holdings), Appellant Wharf Communication, Appellant Wharf Cable Limited, Appellant Stephen Ng in 97-1421 to file an oversize reply brief 33 pages long [97-1421]. Original and 3 copies c/s: y (hrs) [97-1421]
6/30/98	[1144062] Reply Brief 25 pages in length received from Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421, but not filed. Original and 7 copies. c/s: y (hrs) [97-1421]
	* * *
7/6/98	[1144066] Order filed by Judge(s) Porfilio, Briscoe Denying Appellant motion to file and oversize reply brief. [1143270-1] Parties served by mail. (hrs) [97-1421]
7/6/98	[1144069] Appellant's reply brief filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 97-1421. Original and 7 copies. c/s: y. Appellee's reply brief due (hrs) [97-1421]
9/22/98	[1165139] Appellant's supplemental authority filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, and Stephen Ng in 97-1421. Original and 3 copies. c/s: y (nak) [97-1421]
9/23/98	[1165969] Appellee's supplemental authority filed by United Intl Holdings and UIH ASIA in 97-1421, 98-1002. Original and 7 copies. c/s: y (pdw) [98-1421 98-1002]

Date	Description
10/6/98	[1169062] Appellant's supplemental authority filed by Wharf (Holdings) in 97-1421, Wharf Communications in 97-1421, Wharf Cable Limited in 97-1421, Stephen Ng in 97-1421, 97-1002 Wharf (Holdings) in 97-1002, Wharf Communications in 97-1002, Wharf Cable Limited in 97-1002, Stephen Ng in 97-1002. Original and 7 copies. c/s: y (fg) [97-1421 97-1002]
10/13/98	[1170526] Appellee's supplement authority filed by UIH ASIA and United Intl Holdings in 97-1421. Original and 6 copies. c/s: y. (nak) [97-1421]
12/18/98	[1189352] Hearing set for March 1999 Session, at Denver, Colorado. (sls) [97-1421 98-1002 98-1010 98-1026 98-1054 98-6021]
2/5/99	[1202092] Appellee's supplemental authority filed by UIH ASIA in 98-1002, United Intl Holdings in 98-1002. Original and 7 copies. c/s: y (hrs) [97-1421 98-1002]
2/8/99	[1202752] Appellant's supplemental authority filed by Wharf Cable Limited in 97-1421, Wharf Communications in 97-1421, Wharf (Holdings) in 97-1421, Wharf Cable Limited in 97-1002, Wharf Communications in 97-1002, Wharf (Holdings) in 97-1002. Original and 7 copies. c/s: y (hrs) [97-1421 98-1002]
	* * *
3/8/99	[1209779] Case argued and submitted to Judge Brorby, Holloway, Briscoe. (sls) [97-1421 98-1002]

Date	Description
4/28/00	[1320637] Terminated on the Merits after Oral Hearing; Judgment is Affirmed; Written, Signed, Published, Brorby; Holloway; Briscoe, authoring judge. [97-1421, 98-1002] (afw) 97-1421 98-1002]
5/12/00	[1324626] Petition for rehearing in banc [97-1421, 98-1002] filed by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings), Stephen Ng in 97-1421 and 98-1002. Original and 14 copies. c/s: y.(nak) [97-1421 98-1002]
5/15/00	[1324629] Document [1324626-1] Petition for rehearing in banc filed by Appellants Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 and 98-1002 submitted to panel, (nak) [97-1421-98-1002]
6/6/00	[1330350] Order filed by Judges Brorby, Holloway and Briscoe denying Petition for rehearing en banc [1324626-1] in 97-1421 and 98-1002. (afw) [97-1421 98-1002]
	* * *
6/13/00	[1332259] Appellant's motion filed by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 & 98-1002 to stay execution of the mandate pending certiorari [97-1421, 98-1002]. Original and 3 copies. c/s: y. (pdw) [97-1421 98-1002]
6/13/00	[1332263] Appellant's motion to stay execution of the mandate pending certiorari in 97-1421, 98-1002 submitted to court. (pdw) [97-1421 98-1002]

Date	Description
6/15/00	[1332949] Response in opposition to appellant's motion to stay mandate filed by UIH ASIA and United Intl Holdings in 98-1002 and 97-1421. Original and 3 copies. c/s/: y (afw) [97-1421 98-1002]
6/16/00	[1332856] Response filed by UIH ASIA and United Intl Holdings in 98-1002 and 97-1421 submitted to court. (afw) [97-1421 98-1002]
6/20/00	[1333568] Order filed by Judges Brorby, Holloway and Briscoe granting Appellant's, motion to stay execution of the mandate until 9/5/00 in 97-1421 and 98-1002. Parties served by mail. (kf) [97-1421 98-1002]
9/20/00	[1356380] Petition for writ of certiorari filed on 9/5/00 by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 98-1002]. Supreme Court Number 00-347. (nak) [97-1421 98-1002]
11/15/00	[1371305] Supreme Court order dated 11/6/00 granting certiorari filed, limited to questions 1 and 2 of the petition. (nak) [97-1421 98-1002]

APPENDIX C

Docket Entries for *The Wharf (Holdings) Limited, et al. v. United Int'l Holdings, Inc.*, No. 98-1002, United States Court of Appeals for the Tenth Circuit

U.S. Court of Appeals for the Tenth Circuit

CIVIL DOCKET FOR CASE #: 98-1002

United Intl Holdings, et al. v. Wharf (Holdings), et al.

Filed: 11/7/97
Nature of Suit: 3850
Appeal from U.S. District Court for the District of Colorado

Date	Description
1/6/98	[1096675] Civil case docketed. Preliminary record filed. DATE RECEIVED: 12/31/97. Transcript order form due 1/16/98 for Charlotte Hoard pursuant to R.42.1. Docketing statement due 1/16/98 for Stephen Ng, Wharf Cable Limited, Wharf Communications, and Wharf (Holdings). Notice of appearance due 1/16/98 for Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings), UIH ASIA, and United Intl Holdings. (afw) [98-1002]
1/9/98	[1097932] Notice of appearance filed by Paul Michael Dodyk in 98-1002 as attorney for Wharf (Holdings), Wharf Communications, Wharf Cable Limited, and Stephen Ng. CERT. OF INTERESTED PARTIES (y/n): y. (nak) [98-1002]
	* * *
1/9/98	[1097943] Docketing statement filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 98-1002. Original and 4 copies. c/s: y. (nak)

Date	Description
1/14/98	[1099480] Notice of appearance filed by Steven Finizio, Louis R. Cohen, Jeffrey A. Chase, David Bruce Wilson as attorney for United Intl Holdings, UIH ASIA in 98-1002. CERT. OF INTERESTED PARTIES (y/n): n (hrs) [98-1002]
1/16/98	[1100352] Notice of appearance filed by Martin Thomas Tully and William Robert Jentes in 98-1002, and 97-1421 as attorneys for Wharf (Holdings), Wharf Communications, Wharf Cable Limited and Stephen Ng in 98-1002 and 97-1421. CERT. OF INTERESTED PARTIES (y/n): n (afw) [97-1421 98-1002]
1/16/98	[1100813] Filed notice record is complete 1/16/98 Appellant's brief and appendix due 2/25/98 for Stephen Ng for Wharf Cable Limited, for Wharf Communications, for Wharf (Holdings) in 97-1421, in 98-1002. (hrs) [97-1421 98-1002]
	* * *
1/29/98	[1103328] Noticeof appearance filed by James Calfee Munson as attorneys for Wharf (Holdings), Wharf Communications, Wharf Cable Limited, and Stephen Ng in 98-1002 and 97-1421. CERT. OF INTERESTED PARTIES (y/n): n. (afw) [97-1421 98-1002]
	* * *

Date	Description
2/20/98	[1108205] Order filed by Judges Porfilio and Briscoe granting Appellants' motion to extend time to file apet brief and denying Appellants' motion to file an oversize brief. [1106218-2] [1106218-1] A/Pet brief and appendix due 4/2/98 for Stephen Ng, Wharf Cable Limited, Wharf Communications and Wharf (Holdings) in 97-1421 and 98-1002. [1106218-2] THE COURT WILL NOT GRANT ADDITIONAL EXTENSIONS. Parties served by mail. (afw) [97-1421 98-1002]
4/3/98	[1119359] Motion for leave to become amicus [97-1421, 98-1002] filed by Product Liability in 97-1421 and 98-1002. Original and 3 copies. c/s: y. (nak) [97-1421 98-1002]
4/3/98	[1119555] Order filed by PF granting motion leave to become amicus [1119359-1]. Notice of appearance due 4/3/98 for Hugh F. Young, Lee A. Mickus and Malcolm E. Wheeler in 97-1421 and 98-1002. Parties served mail. (nak) [97-1421 98-1002]
4/3/98	[1119558] Brief filed by Amicus Curiae Product Liability in 97-1421 and 98-1002. Original and 7 copies. c/s: y. (nak) [97-1421 98-1002]
4/3/98	[1119722] Appellants' brief filed by Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Stephen Ng in 98-1002. Original and 7 copies. c/s: y. Served on 4/2/98 Oral argument? y., Appendix filed VOLs I-V. Original and 1 appendix copy. Appendix Pages: 3055. Appellees' brief due 5/5/98 for UIH ASIA, for United Intl Holdings. (hrs) [98-1002]

Date	Description
4/3/98	[1119724] Addendum to brief filed by Appellants' Wharf (Holdings), Wharf Communications, Wharf Cable Limited, Appellant Stephen Ng in 98-1002. Original and 1 copies. c/s: y. (hrs) [98-1002]
4/3/98	[1243472] Oversized record filed. Record can be located at Section: CC Shelf: 5 (ds) [98-1002]
	* * *
4/13/98	[1121825] Order filed by Judge(s) Porfilio, Briscoe granting Appellee motion to extend time to file eres brief [1120567-1]until 6/2/98 for UIH ASIA in 97-1421, for United Intl Holdings in 97-1421, for UIH ASIA in 98-1002, for United Intl Holdings in 98-1002, granting Appellee motion to file an oversize brief [1120567-2] in 97-1421, 98-1002. Parties served by mail. (hrs) [97-1421 98-1002]
	* * *
4/20/98	[1123784] Order filed by Judges Porfilio, Briscoe referring Appellant's motion to modify the record on appeal [1119731-1] REFERRED TO PANEL ON THE MERITS. Parties served by mail. (nak) [97-1421 98-1002]
	* * *
6/2/98	[1135859] Appellee's brief filed by United Intl Holdings & UIH ASIA in 98-1002. Original and 7 copies. c/s: y. Served on 6/2/98. Oral Argument? y. Appellant's optional reply brief due 6/19/98 for Stephen Ng, for Wharf Cable Limited, for Wharf Communications, for Wharf (Holdings). (pdw) [98-10002]

Date	Description
6/2/98	[1135860] Appendix filed by Appellees United Intl Holdings & UIH ASIA in 98-1002. Original and 1 copy. Appendix pages: 106. c/s: y. (pdw) [98-1002]
	* * *
6/30/98	[1143195] Appellant's reply brief filed by Wharf (Holdings) in 98-1002, Wharf Communications in 98-1002, Wharf Cable Limited in 98-1002, Stephen Ng in 98-1002. Original and 7 copies. c/s: y. (hrs) [98-1002]
9/23/98	[1165969] Appellee's supplemental authority filed by United Intl Holdings and UIH ASIA in 97-1421, 98-1002. Original and 7 copies. c/s: y. (pdw) [97-1421 98-1002]
10/6/98	[1169062] Appellant's supplemental authority filed by Wharf (Holdings) in 97-1421, Wharf Communications in 97-1421, Wharf Cable Limited in 97-1421, Stephen Ng in 97-1421, Wharf (Holdings) in 98-1002, Wharf Communications in 98-1002, Wharf Cable Limited in 98-1002, Stephen Ng in [97-1421 98-1002]
12/18/98	[1189352] Hearing set for March 1999 Session, at Denver, Colorado. (sls) [97-1421 98-1002 98-1010 98-1026 98-1054 98-6021]
2/5/99	[1202092] Appellee's supplemental authority filed by UIH ASIA in 97-1421, United Intl Holdings in 97-1421, UIH ASIA in 98-1002, United Intl Holdings in 98-1002. Original and 7 copies. c/s: y (hrs) [97-1421 98-1002]

Date	Description
2/8/99	[1202752] Appellant's supplemental authority filed by Wharf Cable Limited in 97-1421, Wharf Communications in 97-1421, Wharf (Holdings) in 97-1421, Wharf Cable Limited in 98-1002, Wharf Communications in 98-1002, Wharf (Holdings) in 98-1002. Original and 7 copies. c/s: y (hrs) [97-1421 98-1002]
2/9/99	[1202095] Appellee's supplemental authority submitted to panel. (hrs) [97-1421 98-1002]
2/10/99	[1202753] Appellant's supplemental authority submitted to panel. (hrs) [97-1421 98-1002]
	* * *
3/8/99	[1209779] Case argued and submitted to Judges Brorby, Holloway, Briscoe. (sls) [97-1421 98-1002]
4/28/00	[1320637] Terminated on the Merits after Oral Hearing; Judgment is Affirmed; Written, Signed, Published. Brorby; Holloway; Briscoe, authoring judge. [97-1421, 98-1002] (afw) [97-1421 98-1002]
5/12/00	[1324626] Petition for rehearing in banc [97-1421, 98-1002] filed by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings), Stephen Ng in 97-1421 and 98-1002. Original and 14 copies. c/s: y. (nak) [97-1421 98-1002]
5/15/00	[1324629] Document [1324626-1] petition for rehearing in banc filed by Appellants Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 and 98-1002 submitted to panel. (nak) [97-1421 98-1002]

Date	Description
6/6/00	[1330350] Order filed by Judges Brorby, Holloway and Briscoe denying Petition for rehearing en banc [1324626-1] in 97-1421 and 98-1002. (afw) [97-1421 98-1002]
	* * *
6/13/00	[1332259] Appellant's motion filed by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 & 98-1002 to stay execution of the mandate pending certiorari [97-1421, 98-1002]. Original and 3 copies. c/s: y. (pdw) [97-1421 98-1002]
6/13/00	[1332263] Appellant's motion to stay execution of the mandate pending certiorari in 97-1421, 98-1002 submitted to court. (pdw) [97-1421 98-1002]
6/15/00	[1332949] Response in opposition to appellant's motion to stay mandate filed by UIH ASIA and United Intl Holdings in 98-1002 and 97-1421. Original and 3 copies. c/s: y (afw) [97-1421 98-1002]
6/16/00	[1332956] Response filed by UIH ASIA and United Intl Holdings in 98-1002 and 97-1421 submitted to court. (afw) [97-1421 98-1002]
6/20/00	[1333568] Order filed by Judges Brorby, Holloway and Briscoe granting Appellant's motion to stay execution of the mandate until 9/5/00 in 97-1421 and 98-1002. Parties served by mail. (kf) [97-1421 98-1002]

Date	Description
9/20/00	[1356380] Petition for writ of certiorari filed on 9/5/00 by Stephen Ng, Wharf Cable Limited, Wharf Communications, Wharf (Holdings) in 97-1421 and 98-1002. Supreme Court Number 00-347. (nak) [97-1421 98-1002]
11/15/00	[1371305] Supreme Court order dated 11/6/00 granting certiorari filed, limited to questions 1 and 2 of the petition. (nak) [97-1421 98-1002]

APPENDIX D

Motion to Dismiss Plaintiffs' Claims for Lack of Subject Matter Jurisdiction

January 17, 1995

U.S. District Court for the District of Colorado

(Aplt. App. 36-54)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 94-N-2560

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation, and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company, WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company, WHARF CABLE LIMITED, a Hong Kong company, and STEPHEN NG, a Hong Kong citizen,

Defendants.

MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION

Defendants move to dismiss plaintiffs' claims for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). There is no diversity jurisdiction because one of the plaintiffs and all of the defendants are citizens of Hong Kong. There is no federal question jurisdiction because plaintiffs have not stated a valid claim under the 1934 Securities Exchange Act.

Even if the Court finds plaintiffs have stated a valid 1934 Act claim, this Court should decline to exercise supplemental jurisdiction over plaintiffs' common law claims and their Colorado statutory claims. The Court should dismiss those

claims under 28 U.S.C. § 1367 because they: (i) involve novel and complex issues of law; and (ii) substantially predominate over plaintiffs' federal securities claims.

FACTUAL BACKGROUND

1. Defendants are all citizens of Hong Kong. (Cmplt. ¶¶ 7-8).

2. Plaintiff United International Holdings, Inc. ("UIHI") is a Delaware corporation with its principal place of business in Denver, Colorado. (Id. ¶ 5). Plaintiff UIH Asia Investment Co. ("UIH Asia") is a Colorado general partnership. (Id. ¶ 6). What plaintiffs did not plead is the indisputable fact that two of the general partners in the UIH Asia partnership are corporations with their principal places of business in Hong Kong. (See Exhibit "1"). Those partners (and the UIH Asia partnership) are, therefore, citizens of Hong Kong.

3. Plaintiffs' basic allegation is that the defendant companies, acting through defendant Stephen Ng, reneged on an oral agreement providing UIHI an option to purchase stock in a company that was to be created to bid for, acquire, own and construct a cable television franchise in Hong Kong. (Cmplt. ¶¶ 53-54). Based upon that allegation, plaintiffs assert:

- Two federal securities claims (violations of Rule 10b-5 and Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78i, 78t (1988));

- Three Colorado statutory claims (violations of Colo. Rev. Stat. §§ 11-51-604(3), 604(4) and 604(5)(b) (1988)); and

- Seven common law claims (breach of contract, promissory estoppel, unjust enrichment, fraud, negligent misrepresentation, breach of fiduciary duty, and civil conspiracy).

ARGUMENT

I. THERE IS NO DIVERSITY JURISDICTION BECAUSE PLAINTIFF UIH ASIA AND ALL DEFENDANTS ARE CITIZENS OF HONG KONG

4. UIHI and UIH Asia initially assert that this Court has subject matter jurisdiction based on diversity of citizenship under 28 U S.C. § 1332 (1988). (Cmplt. ¶ 10). That allegation is demonstrably wrong. There is not complete diversity.

5. The requirement of complete diversity applies when parties are citizens of foreign states. Depex Reina 9 Partnership v. Texas Int'l Petroleum Corp., 897 F.2d 461, 465 (10th Cir. 1990). There is, therefore, no diversity jurisdiction where one plaintiff and all defendants are alien citizens, irrespective of whether they are aliens from the same foreign state. See, e.g., Eze v. Yellow Cab Co. of Alexandria, Va., Inc., 782 F.2d 1064, 1065 (D.C. Cir. 1986) (per curiam) (no diversity where alien citizen sues citizen of state and citizen of other foreign country); Giannakos v. M/V Bravo Trader, 762 F.2d 1295 (5th Cir. 1985) (diversity does not exist where aliens are on both sides of litigation); Corporacion Venezolana de Fomento v. Vintero Sales Corp., 629 F.2d 786, 790 (2d Cir. 1980), cert. denied, 449 U.S. 1080 (1981) (same); see generally 13B Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 3604 (1984). Logically, there is even less reason for a United States District Court to take jurisdiction over an action where, as here, the plaintiff and defendants are citizens of the same foreign state--Hong Kong.

6. UIHI and UIH Asia allege that UIH Asia is a Colorado general partnership. (Cmplt. ¶ 6). They fail, however, to provide this Court with the citizenship of all of the UIH Asia partners as they are required to do to properly plead diversity. UIH Asia's failure to plead the citizenship of each of its partners by itself shows a defect in the district court's subject matter jurisdiction. See Penteco Corp. Ltd. Partnership v. Union Gas Sys., Inc., 929 F.2d. 1519, 1522-23 (10th Cir. 1991).

7. For diversity purposes, a general partnership is a citizen of each state in which any of its partners are citizens. Carden v. Arkoma Assoc., 494 U.S. 185, 195-96 (1990); Penteco, 929 F.2d at 1522-23; Depex Reina, 897 F.2d at 463; Richardson v. Edward D. Jones & Co., 744 F. Supp. 1023, 1024 (D. Colo. 1990). According to UIHI's own prospectus filed with the SEC (at 73), two of UIH Asia's general partners are Hong Kong corporations. (A true and correct copy of the pertinent excerpts of UIHI's Prospectus is attached to this motion as Exh. "1").[1] UIH Asia is, therefore, a citizen of Hong Kong for diversity purposes.

8. UIHI and UIH Asia do not and cannot meet the requirement of complete diversity because foreign citizens of the same foreign state are both plaintiff and defendants in this

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[1] Defendants ask the Court to take judicial notice of these facts. Fed. R. Evid. 201. A district court may take judicial notice of public disclosure documents that the SEC requires a corporation to file, including prospectuses. See Kramer v. Time Warner Inc., 937 F. 2d 767, 774 (2d Cir. 1991); In re AES Corp. Sec. Litig., 825 F. Supp. 578, 585 n.6 (S.D.N.Y. 1993). Moreover, by taking judicial notice of these public documents the Court does not transform a Rule 12 motion to dismiss into a motion for summary judgment. See, e.g., United States v. Wood, 925 F.2d 1580, 1581 (7th Cir. 1991); Mack v. South Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986); Ades v. Deloitte & Touche, 1993 WL 362364, at *8 (S.D.N.Y. 1993).

action. This Court does not, therefore, have diversity jurisdiction over any of UIHI's and UIH Asia's claims.

II. THERE IS NO FEDERAL QUESTION JURISDICTION BECAUSE PLAINTIFFS HAVE FAILED TO STATE A VALID CLAIM UNDER THE SECURITIES EXCHANGE ACT OF 1934

9. UIHI and UIH Asia assert two federal securities claims: (i) violation of Rule 10b-5; and (ii) control person liability under Section 20(a). The 10b-5 claim is the underlying violation of the securities act on which they base their control person claim. Thus, both claims should be dismissed if UIHI and UIH Asia have failed to state a 10b-5 claim. See R.H. Damon & Co., Inc. v. Softkey Software Prods., Inc., 811 F. Supp. 986, 992 (S.D.N.Y. 1993).[2]

10. A complaint states a cause of action under Rule 10b-5 when the plaintiffs plead the following elements: (1) damage to plaintiffs; (2) caused by their reliance on defendants' misrepresentations or omissions of material facts, or on a scheme or artifice of defendants to defraud; (3) made with scienter; (4) furthered by the use of the mails, interstate commerce or any national securities exchange; and (5) made in connection with the purchase or sale of a security. See Royal American Managers, Inc. v. IRC Holding Corp., 885 F.2d 1011, 1015 (2d Cir. 1989).

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[2] This section of the motion is both a motion to dismiss for failure to state a claim under Rule 12(b) (6) and a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1). UIH and UIH Asia's failure to state a valid securities claim necessarily means that this Court lacks subject matter jurisdiction over those claims. E.g., Hunt v. Robinson, 852 F.2d 786, 786-87 (4th Cir. 1988) (district court lacked federal question jurisdiction because complaint failed to state federal cause of action under Section 10(b)).

11. UIHI and UIH Asia have failed to state a valid securities claim because they have not adequately alleged facts establishing the fifth necessary element. For the two following reasons, plaintiffs have failed to properly allege fraud "in connection with the purchase or sale of a security."

A. UIH And UIH Asia Fail To Allege The Existence Of An Enforceable Contract To Purchase Or Sell A Security.

12. A contract to purchase a security is itself a security. 15 U.S.C. § 78c(a)(10) (1988). In appropriate circumstances, therefore, a contract to purchase securities can be the basis for a claim under Rule 10b-5. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 751 (1975) ("holders of puts, calls, options, and other contractual rights or duties to purchase or sell securities have been recognized as 'purchasers' or 'sellers' for purposes of Rule 10b-5"). It is a prerequisite, however, to any such claim that plaintiffs allege the existence of an enforceable contract to purchase securities. E.g., Kagan v. Edison Bros. Stores, Inc. 907 F.2d 690, 691 (7th Cir. 1990).

13. In the present case, UIHI and UIH Asia expressly allege that one or more of the defendants entered into an oral agreement granting UIHI an option to purchase at least 10% of the capital stock of CNCL (Wharf Cable's parent). (Cmplt. ¶ 53). UIHI and UIH Asia further allege that the parties reached this oral agreement at UIHI's offices in Denver. (Id. ¶ 54).

14. Colorado's statute of frauds provides that an oral contract for the sale of securities is not enforceable. Colo. Rev. Stat. § 4-8-319 (1992). See also Kiely v. St. Germain, 670 P.2d 764, 769 (Colo. 1983) (statute of frauds "prohibits the sale of or purchase of this type of asset in the absence of a complete written agreement concerning the essential terms of

such transaction").[3] Here, UIHI and UIH Asia allege that certain terms were agreed to orally but they admit that, at the time of the alleged oral contract, the parties "contemplated that they would negotiate and document terms under which UIHI would exercise its option to invest and purchase stock in CNCL." (Cmplt. ¶ 54) (emphasis added). Thus, in this case, no terms of the purported contract were reduced to writing, and plaintiffs admit that the parties never agreed to terms which defendants submit are "essential" -- the terms under which UIHI could exercise the alleged option. Under these circumstances, this Court should find that there was no enforceable option contract between the parties.[4]

15. The remaining question is whether plaintiffs can state a valid securities claim based upon the nonperformance of an unenforceable contract. The majority of the courts which have addressed the question have concluded that the alleged existence of an unenforceable contract to purchase a security cannot support a Rule 10b-5 claim. See, e.g., Kagan v. Edison Bros. Stores, Inc., 907 F.2d at 691 (granting motion to dismiss

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[3] Defendants deny that an oral contract granting UIHI an option was made in Colorado or anywhere else. However, for the purposes of the present motion, defendants must take as true plaintiffs' allegations. Therefore, solely for the purpose of this motion, defendants assume that Colorado law applies to the question of the enforceability of the alleged oral agreement.

[4] Numerous courts have held that an oral agreement to purchase stock is not enforceable. See, e.g., Bright v. QSP, Inc., 20 F.3d. 1300, 1305 (4th Cir. 1994) (applying West Virginia law), cert. denied, 115 S.Ct. 202 (1994); Levinson v. Charbonnet, 977 F.2d 930, 932-33 (5th Cir. 1992) (applying Louisiana law); Joseph E. Seagram & Sons, Inc. v. Shaffer, 310 F.2d 668, 673-74 (10th Cir. 1962) (applying Oklahoma law), cert. denied, 373 U.S. 948 (1963); Sandler v. Marconi Circuit Tech. Corp., 814 F. Supp. 263, 267 (E.D.N.Y. 1993) (applying New York law); Haught v. Lante Corp., 1991 WL 148198, at *3 (N.D. Ill. 1991) (applying Illinois law); Young v. Simpson, 607 F. Supp. 67, 69 (E.D. Tex. 1985) (applying Texas law).

10b-5 claim because "principles animating [statute of frauds] and the doctrine of Blue Chip Stamps alike require a conclusion that an unenforceable oral agreement is not a 'contract' to purchase or sell securities"); Pelletier v. Stuart-James Co., Inc., 863 F.2d 1550, 1555-56 (11th Cir. 1989) (alleged oral contract was unenforceable, thus defendants' alleged fraudulent refusal to perform contract could not form basis for liability in 10b-5 action); Southeastern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc., 506 F. Supp. 944, 951 (N.D. Ga. 1980) (person who alleges Rule 10b-5 claim must demonstrate that he is either actual purchaser/seller or that he was party to legally enforceable contract to purchase or sell securities; there is "simply no convincing argument which can be made to equate an unenforceable contract with a sale").[5]

16. The rationale for these decisions is, in part, that opening the door to federal securities claims arising out of unfulfilled oral contracts to sell securities would greatly expand the scope of potential securities fraud plaintiffs. Moreover, such claims would be the subject of proof problems not found in other securities claims.

17. The Supreme Court in Blue Chip noted that a misrepresentation which leads to a refusal to purchase or sell will state a common law claim for fraud or deceit. 421 U.S. at 744. The Court nonetheless adopted the "Birnbaum" rule and limited 10b-5 claims to actual purchasers or sellers due to concerns about matters of proof relating to attempted purchases and sales. According to the Court in Blue Chip, the Birnbaum rule:

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[5] Cf. Chariot Group, Inc. v. American Acquisition Partners, L.P., 751 F. Supp. 1144, 1149 (S.D.N.Y. 1990), aff'd 932 F.2d 956 (2d Cir. 1991) (even an oral contract may be sufficient to provide basis for 10b-5 claim if it reflects meeting of minds; but holding that no contract existed where parties intended to be bound only by a written agreement).

> permits exclusion prior to trial of those plaintiffs who were not themselves purchasers or sellers of the stock in question. The fact of purchase of stock and the fact of sale of stock are generally matters which are verifiable by documentation, and do not depend on oral recollection. . . . [T]he abolition of the Birnbaum rule would throw open to the trier of fact many rather hazy issues of historical fact the proof of which depended almost entirely on oral testimony. We in no way disparage the worth and frequent high value of oral testimony when we say that dangers of its abuse appear to exist in this type of action to a peculiarly high degree.

Id. at 742-43. This rationale applies equally to a case such as this, where plaintiffs base their allegations that they purchased a security on the existence of an oral option contract. This Court, therefore, should find that UIH and UIH Asia have failed to state a valid 10b-5 claim because they have not alleged the existence of an enforceable contract for the purchase of a security.

B. UIH And UIH Asia Failed To Adequately Allege Fraud "In Connection With" The Purchase of A Security.

18. Judge Kane stated almost ten years ago that the words "in connection with" the purchase of a security are to be broadly interpreted. Technology Exch. Corp. of Am., Inc. v. Grant County State Bank, 646 F. Supp. 179, 182 (D. Colo. 1986). It is also true, however, that the Supreme Court has held that a court should be reluctant to imply a 10b-5 cause of action for wrongs that do not fall within the fundamental purpose of Section 10(b) : requiring full and fair disclosure to participants in securities transactions of information that would be useful to them in deciding whether to buy or sell securities. Santa Fe Indus., Inc., v. Green, 430 U.S. 462, 477-78 (1977).

19. Courts have, therefore, held that the "in connection with" requirement of a Rule 10b-5 claim is met only if the alleged misrepresentations relate to the value of the security at issue or the value of the consideration in return for it. Gurwara v. LyphoMed, Inc., 937 F.2d 380, 383 (7th Cir. 1991); Hunt, 852 F.2d at 787; see also Manufacturers Hanover Trust Co. v. Smith, Barney, Harris Upham & Co., 770 F. Supp. 176, 181 (S.D.N.Y 1991) ("in connection with" requirement mandates that alleged fraud concern the fundamental nature of the securities: namely, characteristics and attributes that would induce investors to buy or sell them).

20. In contrast, it is not sufficient to allege that a seller has reneged on a contract to sell securities. In other words, the mere breach of a contract to sell securities does not give rise to a federal securities claim simply because the disappointed purchaser alleges that the seller lied about his intent to fulfill the contract. Deprived purchasers can and should be limited to common law remedies for such claims.

21. A number of courts have held that allegations similar to UIHI and UIH Asia's do not fulfill the "in connection with" requirement. The Courts of Appeal for the Seventh and Fourth Circuits, for example, have both held that where employers led employees to believe that they would receive shares of stock as part of their compensation, and then failed to carry through on that promise, the employees failed to state a 10b-5 claim because the alleged fraud related to obtaining the security rather than to the value of the security. Gurwara, 937 F.2d at 381-82; Hunt, 852 F.2d at 787.

22. The Fourth Circuit in Hunt noted that such claims give rise to several cognizable common law claims, including breach of contract, common law fraud and fraudulent nonconveyance of stock, but these common law claims should not be transformed into a federal claim "simply because the

object of the bargain was shares of stock." Id. at 787. According to the Fourth Circuit:

> [T]he gravamen of plaintiff's complaint is that the defendants fraudulently refused to convey or tender the stock to him. The alleged fraud lies, not in the actual sale of the stock, but rather in defendants' refusal to tender the shares as required by the terms of the contract. Thus, the "causal connection between the alleged fraud and the purchase or sale of stock" required to state a federal cause of action under § 10(b) is lacking.

Id. (quoting Tully v. Mott Supermarkets, Inc., 540 F.2d 187, 194 (3d Cir. 1976) (no 10b-5 claim where gravamen of complaint was that plaintiffs were deprived purchasers)).

23. The facts in the case at bar are very similar to the facts in R.H. Damon & Co., Inc. v. Softkey Software Prod. Inc., 811 F. Supp. 986 (S.D.N.Y. 1993). In that case, Softkey (a Canadian corporation) retained Damon (a New York corporation) to act as financial advisors. Compensation for Damon's services was to be paid in securities. Damon and Softkey first entered into a Warrant Agreement. They subsequently executed an Option Agreement. Id. at 989-90. After the parties had a falling out, Softkey "refused to honor plaintiffs' options to purchase stock." Id. at 990. Damon filed an action in federal court asserting a 10b-5 claim, a breach of contract claim, and common law fraud claims.

24. The court in Damon granted Softkey's motion to dismiss Damon's 10b-5 claim. The court held that allegations that Softkey "defrauded [plaintiffs] through misrepresentations regarding the terms and validity of the Option Agreement" did not meet the "in connection with" requirement. Id. at 1992. The court noted that there were no allegations of misrepresentations concerning the assets, liabilities or earnings

of the company which granted the option. That is, there were no allegations of fraud concerning the value of the option or concerning other characteristics and attributes that led to Damon's decision to acquire the option in exchange for its services. Id. The court in Damon held that alleged misrepresentations relating to "the conditions under which the defendants would compensate the plaintiffs for their services" do not state a 10b-5 claim. Id.[6]

25. This Court, therefore, should dismiss UIHI's and UIH Asia's Rule 10b-5 claim because the mere allegation that they were deprived purchasers of an option is not sufficient to meet the "in connection" requirement of the Rule. Moreover, this Court should find that it lacks federal question jurisdiction over any claims because plaintiffs failed to state a valid federal cause of action.

III. THIS COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFFS' STATE AND COMMON LAW CLAIMS

If this Court agrees with the above arguments, then it should dismiss this case in its entirety. Even if the Court finds plaintiffs have adequately alleged claims under Sections 10(b) and 20(a) of the Securities Exchange Act, this Court should use its discretion to decline to exercise supplemental jurisdiction over the ten state and common law claims because of the

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[6] See also Flickfinger v. Harold Brown & Co., 947 F.2d 595, 598 (2d Cir. 1991) (no 10b-5 claim for conversion or theft of security or other fraudulent scheme which, some time after purchase, divests purchaser of ownership) ; Niederhoffer, Cross & Zeckhauser, Inc. v. Telstat Sys. Inc., 436 F. Supp. 180, 186-87 (S.D.N.Y. 1977) (dismissing 10b-5 claim based on claim that defendant reneged on agreement to provide stock as finder's fee; such allegations "in no way threaten the integrity of securities transactions or markets as such. The simply bespeak frustrations of a private contractual expectancy").

increased complexity these claims add to this action and the fact that they predominate over the two federal question claims.

26. This Court has a long history of declining to accept pendent jurisdiction in federal securities cases. See, e.g., Bank of Denver v. Southeastern Cap. Group, Inc., 763 F. Supp. 1552, 1560-61 (D. Colo. 1991); Ayers v. Speer, 719 F. Supp. 960, 961 (D. Colo. 1989); Coffey v. Dean Witter Reynolds, Inc., 640 F. Supp. 874, 877 (D. Colo. 1986); Miller v. Calvin, 647 F. Supp. 199, 203 (D. Colo. 1985).

27. District Courts continue to have discretion regarding the exercise of supplemental jurisdiction because the new supplemental jurisdiction statute codifies the doctrine of pendent jurisdiction. See, e.g., In re Synergen, Inc. Securities Litig., 154 F.R.D. 265, 267 (D. Colo. 1994); James v. Sun Glass Hut of Cal., Inc., 799 F. Supp. 1083, 1084 (D. Colo. 1992).

28. Specifically, Section 1367(c) of the new statute provides that District Courts may decline to exercise supplemental jurisdiction if:

a) the claim raises a novel or complex issue of state law;

b) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;

c) the district court has dismissed all claims over which it has original jurisdiction; or

d) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C § 1367(c).

29. This Court has continued to use its discretion under the supplemental jurisdiction statute to decline to accept jurisdiction over common law claims and state securities law claims where the presence of federal securities claims provide the basis for the Court's subject matter jurisdiction. See In re Synergen, 154 F.R.D. at 268; Consumers Gas & Oil, Inc. v. Farmland Indus., Inc., 815 F. Supp. 1403, 1412 (D. Colo. 1992).[7] Because there is no diversity jurisdiction, the federal securities claims provide the only possible alleged basis for this Court's subject matter jurisdiction.

30. This Court should exercise its discretion under Section 1367(c) and decline to exercise supplemental jurisdiction. This is true whether the Court dismisses the federal securities claims or allows them to stay in the case. UIHI's and UIH Asia's state and common law claims raise numerous novel and complex questions of law that will unduly prolong and complicate this action. Moreover, the ten non-federal claims will predominate over the two federal securities claims.

31. As but one example of the complex issues involved with the state and common law claims, they will require that this Court perform a complex and novel choice of law analysis. This Court should apply the "most significant relationship" test of the Restatement (Second) of Conflicts of Laws to determine which jurisdiction's substantive law will govern UIHI's and UIH Asia's common law claims. See Morgan v. United Air Lines, Inc., 750 F. Supp. 1046, 1052 (D. Colo. 1990). Even a cursory review of the Complaint reveals that Hong Kong appears to have the most significant relationship to the parties

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[7] But cf. In re Storage Tech. Corp., Sec. Litig., 804 F. Supp. 1368, 1375 (D. Colo. 1992) (accepting supplemental jurisdiction over common law fraud claims in federal securities action).

and the transactions that are at issue here. If this Court concludes that Hong Kong common law applies to UIHI's and UIH Asia's common law claims, the complexity of the case for the Court and the jury will increase dramatically. The Court will have to first determine what Hong Kong law provides and then instruct the jury accordingly.

32. Moreover, the Court should not exercise supplemental jurisdiction in this case because UIHI's and UIH Asia's "contract and fraud claims require elements of proof that are distinct and foreign" to their federal securities claims. James, 799 F. Supp. at 1085. To give just one example, Subsection 604(3) of the Colorado Securities Act imposes liability on "any person who recklessly, knowingly, or with an intent to defraud sells or buys a security in violation of § 11-51-501." Colo. Rev. Stat. § 11-51-604(3) (1987) (emphasis added). The difference between the much broader nexus requirement of Section 10(b) of the 1934 Act and Rule 10b-5, and the far narrower nexus requirement of the Colorado Act, is a significant difference. See Matthew B. Wills, A Comparison of Rule 10b-5 and the Colorado Securities Act of 1990, Colo. Law. Vol. 20, 41, 42 (Jan. 1991).

33. UIHI and UIH Asia also seek punitive damages under their state law and common law claims. The Colorado Supreme Court has not yet decided whether a violation of the Colorado Securities Act constitutes "fraud, malice or wilful and wanton conduct" such that it would entitle a plaintiff to punitive damages under Colo. Rev. Stat. § 13-21-102 (1987). In contrast, the law is settled that punitive damages are not available under UIHI's and UIH Asia's federal securities claims. DeHaas v. Empire Petroleum Co., 435 F.2d 1223, 1232 (10th Cir. 1970); In re Storage Tech. Corp. Sec. Litig., 630 F. Supp. 1072, 1080 (D. Colo. 1986). Thus, the remedies under the two types of securities claims are potentially not consistent. Similarly, there can be no recovery of attorneys'

fees in a Rule 10b-5 action, but the Colorado Securities Act allows for the recovery of these fees. Colo. Rev. Stat. § 11-51-604(3) (1987).

34. As this Court has previously recognized, it is proper to decline to exercise jurisdiction over non-federal claims where those claims will "expand improperly the coverage and remedies provided under federal securities laws." Coffey, 640 F. Supp. at 877. This Court earlier explained that:

> These limitations on the federal securities claim may well be the motivating reason for the type of joinder of claims made in this complaint and which has become typical in this kind of litigation. Such an apparent attempt to expand the scope of the remedy is a reason to reject these pendent claims in recognition of the limited role of the federal law and federal courts.

Kerby v. Commodity Resources Inc., 395 F. Supp. 786, 790 (D. Colo. 1975).

35. This Court has also expressly stated that "submission of similar but distinct state and federal securities statutes will tend to confuse the jury." Coffey, 640 F. Supp. at 877. The fact that this confusion results is a compelling argument against exercising supplemental jurisdiction over the claims which are based on the Colorado state securities statutes.

CONCLUSION

Because plaintiff UIH Asia and all of the defendants are citizens of Hong Kong, this Court lacks diversity jurisdiction over all of the state and common law claims. Diversity is destroyed by the presence of alien parties on both sides, regardless of the foreign state of which they are citizens. The fact that these parties are citizens of the same foreign state is

yet another reason for this Court not to exercise jurisdiction over these claims.

Plaintiffs have not stated a valid federal securities claims because they have not pleaded fraud "in connection with the purchase or sale of a security." The alleged oral option agreement is not enforceable as a matter of law. Moreover, the alleged fraud relates only to the intent to breach that supposed agreement and does not relate to the value of the option or any other attributes of a security that Congress and the SEC intended the Act and Rules to protect.

The ten state and common law claims predominate over the two federal securities claims. They will introduce novel and complex issues involving choice of law analyses, the application of Hong Kong statutory and common law, and an effort to engraft expanded state law remedies onto the federal statutes. While standing alone these are each reasons for this Court to decline to accept jurisdiction, they together compel the result that regardless of whether this Court determines it has subject matter jurisdiction over the federal securities claims, it should not exercise Section 1367 supplemental jurisdiction.

WHEREFORE, for all of these reasons, defendants request that the Court decline to exercise diversity jurisdiction over these non-diverse parties, that it dismiss the federal securities claims for lack of subject matter jurisdiction and failure to state

a claim, and that it decline to exercise supplemental jurisdiction over the state and common law claims.

DATED: January 17, 1995.

Respectfully submitted,

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APPENDIX E

Reply in Support of Motion to Dismiss
UIHI/UIH Asia's Claims for
Lack of Subject Matter Jurisdiction
February 27, 1995
U.S. District Court for the District of Colorado
(Aplt. App. 55-70)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 94-N-2560

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation, and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company, WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company, WHARF CABLE LIMITED, a Hong Kong company, and STEPHEN NG, a Hong Kong citizen,

Defendants.

REPLY IN SUPPORT OF MOTION TO DISMISS UIHI/UIH ASIA'S CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION

The Court should dismiss all of the claims UIHI/UIH Asia have pleaded because it does not have subject matter jurisdiction.

UIHI/UIH Asia belatedly admit that -- contrary to their allegations in the Complaint -- this Court does not have diversity jurisdiction. They now concede the accuracy of defendants' identification from UIHI/UIH Asia's own

publicly-filed documents of the fact that UIH Asia and all of the defendants are citizens of Hong Kong.[1]

This Court does not have federal question jurisdiction because UIHI/UIH Asia failed to allege fraud "in connection with the purchase or sale of a security." Instead, they allege only that some of the defendants failed to perform an alleged "option," and they do not adequately allege even the most basic terms of that supposed "option" such as price, quantity, or conditions with which they had to comply to exercise the option.

Even if this Court were to find that there is federal question jurisdiction over Counts 4 and 5, this Court should exercise its discretion to decline to accept jurisdiction over UIHI/UIH Asia's ten state and common law claims. The Court should do so not simply because there are more state and common law claims, but because those claims predominate and would needlessly complicate this action.[2]

I. UIHI/UIH ASIA FAIL TO STATE A VALID CLAIM UNDER THE SECURITIES EXCHANGE ACT OF 1934

The Court should dismiss UIHI/UIH Asia's two federal securities claims because they: (a) fail to allege the existence

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[1] UIHI/UIH Asia confessed defendants' motion as it relates to diversity jurisdiction. See Opp. at 1 n.1. They offer no explanation for their failure to properly plead the citizenship of the partners in UIH Asia or to timely disclose these facts of which they had knowledge.

[2] If this Court finds that it has jurisdiction over some or all of the claims asserted in the Complaint, then the following questions raised by other pending motions need to be addressed: (a) should all of UIHI/UIH Asia's claims be submitted to arbitration in Hong Kong; (b) did UIHI/UIH Asia plead fraud with the required particularity; and (c) did UIHI/UIH Asia plead a valid promissory estoppel claim against defendant Stephen Ng.

of a valid or enforceable contract to purchase or sell a security; and (b) improperly attempt to make a "federal case" out of the claim that they are a "deprived purchaser." To the extent UIHI/UIH Asia have any valid claims arising out of their failed attempt to invest in Wharf Cable or CNCL (which defendants in no way concede), this Court should relegate them to pursuing their common law causes of action in the appropriate forum.

A. UIHI/UIH Asia's Failure to Allege The Existence Of A Valid And Enforceable Option Agreement Is Fatal To Both of Their Federal Securities Claims.

This Court should follow the majority of jurisdictions which have concluded that invalid and unenforceable contracts cannot form the basis of a federal securities claim, and that they will not allow deprived purchasers such as UIHI/UIH Asia to convert the statue of frauds into a "hollow doctrine." The courts in the decisions on which defendants rely carefully analyzed the question of the proper interpretation of the term "contract" in light of the Supreme Court's decision in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). In contrast, the decision on which UIHI/UIH Asia rely merely state a conclusion with little if any analysis or rationale.[3]

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[3] Neither the Supreme Court nor the Tenth Circuit has decided whether an unenforceable contract is a "contract" under the statute. Both defendants (Mot. at 8) and UIHI/UIH Asia (Opp. at 7) assert that the majority of courts considering the issue have ruled in their favor. Defendants rely on the Seventh Circuit opinion in Kagan v. Edison Bros. Stores, Inc., 907 F.2d 690, 691 (7th Cir. 1990), the Eleventh Circuit's opinion in Pelletier v. Stuart-James Co., Inc., 863 F.2d 1550, 1555-56 (11th Cir. 1989) and the Northern District of Georgia's opinion in Southeastern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc., 506 F. Supp. 944, 951 (N.D. Ga. 1980). UIHI/UIH Asia purport to "outweigh" these three decisions (Opp. at 8 n.4) by citing the D.C. Circuit's decision in Threadgill v. Black, 750 F.2d 810, 811-12 (D.C. Cir. 1984), two decisions from the same jurisdiction (the Southern District of New York) and Fogarty v. Security Trust Co., 532 F.2d 1029, 1034 (5th Cir. 1976).

1. The Court should construe the term "contract" to mean "enforceable contract."

The central question defendants presents is: What did Congress mean by the term "contract" in the Securities Exchange Act? This is a question of statutory construction.[4] The Court should not construe the 1934 Act such that an invalid and unenforceable contract would fall within the statutory term "contract."

Two courts of appeal and one district court have concluded that the language of the statute and the Supreme Court's decision in Blue Chip Stamps compel the conclusion that a "contract" for purposes of the 1934 Act means an enforceable contract. Judge Easterbrook of the Seventh Circuit put it this way in his opinion for the unanimous panel in Kagan v. Edison Bros. Stores, Inc., 907 F.2d 690, 691 (7th Cir. 1990):

> "Contract" in the securities acts is a word of legal art. Without signed writings, consideration, and the other legal requirements for enforcement, there is no "contract"; there

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The Court should ignore Fogarty because the Court there did not consider the issue of whether an unenforceable contract is a "contract" under the Securities Exchange Act. See infra at 6-7.

[4] Contrary to UIHI/UIH Asia's assertions, there are no supremacy clause or preemption issues to consider. Cf. Opp. at 7, 9. As demonstrated by the opinions in Kagan, Pelletier and Chem-Nuclear, after deciding as a matter of statutory construction that only "enforceable" contracts qualify, it is entirely proper to refer to the governing law of contract to determine whether a contract is or is not "enforceable." Similar situations frequently arise because of the fact that there is no general federal common law. To give a pertinent example, UIHI/UIH Asia are relying on state common law principles of agency and respondeat superior when suing Wharf Communications directly for Ng's alleged misrepresentations (as opposed to pursuing only a "control person" claims against Wharf Communications). See Kerbs v. Fall River Indus., Inc., 502 F.2d 731, 740-41 (10th Cir. 1974).

> is only a promise. This is not mindless formalism. Blue Chip Stamps stressed the substantial problems of proof and high risk of error entailed in litigating claims that fraud prevented a sale from occurring. Statutes of frauds likewise are concerned with problems of proof. It is easy to say that there was an oral agreement. Section 8-319 of the UCC increases certainty in commercial life by preventing the enforcement of oral agreements to purchase or sell securities. The statue of frauds would be a hollow doctrine if disappointed sellers could convert their contract claims into actions under Rule 10b-5. The principles animating § 8-319 and the doctrine of Blue Chip Stamps alike require a conclusion that an unenforceable oral agreement is not a "contract" to purchase or sell securities. The district court properly dismissed the securities claim.

Id. (footnote omitted). Here, the Court has a real-life illustration of the same threatened dangers of: (a) proof problems and high risk of error in litigating claims that defendants' conduct prevented a sale from occurring, where it is easy to say that there was an oral agreement; (b) removing the certainty in international commercial transactions by allowing the enforcement of oral agreements to purchase or sell securities; and (c) making the statue of frauds a hollow doctrine where disappointed buyers can convert their contract claims into Rule 10b-5 actions.

The district court in Southwestern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc. expressed similar concerns with the concept that an unenforceable oral contract could be used to state a Rule 10b-5 claim.[5] Southeastern Waste Treatment, Inc.

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[5] For example, the court noted that "[t]he Statute of Frauds, though seemingly harsh in effect on occasion, is a useful mechanism for encouraging people to formalize their business transactions. When a document is signed, the line between negotiation and contract is unmistakable." Chem-Nuclear, 506 F. Supp. at 955.

v. Chem-Nuclear Sys., Inc., 506 F. Supp. 944, 951-53 (N.D. Ga. 1980). After the court dismissed plaintiff's securities claims in Chem-Nuclear, plaintiff asked it to reconsider by directing the court's attention to Desser v. Ashton, 408 F. Supp. 1174 (S.D.N.Y. 1975), aff'd, 573 F.2d 1289 (2d Cir. 1977) -- one of the cases UIHI/UIH Asia cited (Opp. at 8 n.4). Chem-Nuclear, 506 F. Supp. at 951. The court in Chem-Nuclear examined the Supreme Court's directions in Blue Chip Stamps and then denied the motion to reconsider, holding that:

> [T]he logic of Blue Chip inexorably leads to the conclusion that a person who alleges a violation of Rule 10b-5 must demonstrate that he is either an actual purchaser/seller or that he was a party to a legally enforceable contract to purchase or sell securities. The decision in Desser is not persuasive.

Id. at 953.

In the third case on which defendants rely, the Eleventh Circuit relied on the holdings and rationale of Blue Chip Stamps and Chem-Nuclear to conclude that "a person who alleges a violation of Rule 10b-5 must demonstrate that he is an actual purchaser or seller, or that he was party to a legally enforceable contract to purchase or sell securities." Pelletier v. Stuart-James Co., 863 F.2d 1550, 1555-56 (11th Cir. 1986).

The contrary authorities UIHI/UIH Asia cite (see Opp. at 8 n. 4) are not persuasive. First, the Desser court did not address the concerns the Supreme Court raised in Blue Chip Stamps. Second, the Seventh Circuit in Kagan considered and rejected the District of Columbia Circuit's earlier decision in Threadgill v. Black, 730 F.2d 810 (D.C. Cir. 1984), stating "Threadgill did not mention the UCC or give a reason for its conclusion that the [oral] agreement was a 'contract' under the securities laws." Kagan, 907 F.2d at 691 n.*. Third,

UIHI/UIH Asia's reliance on Fogarty v. Security Trust Co., 532 F.2d 1029, 1034 (5th Cir. 1976), is even more misplaced. That case does not consider the question of whether an unenforceable contract is a "contract" under the Securities Exchange Act. There was no dispute in Fogarty as to whether the case involved a "purchase or sale" of a security. Fogarty addressed the very different question of whether oral representations made during the course of an otherwise valid "purchase or sale" can form the basis of a Rule 10b-5 claim. On that question, Fogarty noted, in dicta and without analysis or explanation, that plaintiffs' claims based upon oral representations were not barred because "state statutes of fraud do not bar recovery under Rule 10b-5." Id. Tellingly, Fogarty is not cited as authority in any of the six more recent decisions that the parties have cited on the question of whether an unenforceable contract fails to meet the "purchase or sale" requirement.

2. The alleged option contract is governed by one of two provisions of Colorado's Uniform Commercial Code.

UIHI/UIH Asia's argument that the alleged option is not a security within the meaning of C.R.S. § 4-8-319 is wrong. A number of courts have concluded that an option agreement is a sale of a security that is governed by the statue of frauds in Section 8-319 of the Uniform Commercial Code. See, e.g., Sandler v. Marconi Circuit Technology Corp., 814 F. Supp. 263, 267 (E.D.N.Y. 1993); Midfelt v. Lair, 561 P.2d 805, 812 (Kan. 1977); Quinn v. Beverages of West Virginia, Inc., 224 S.E.2d 894, 898 (W. Va. 1976).

However, this Court does not need to decide whether the option agreement is an Article 8 security. Even if Section 8-319 does not apply, the alleged oral option agreement is nonetheless governed by the UCC's "catch-all" statute of

frauds, C.R.S. § 4-1-206 (1992). See Dairyland Fin. Corp. v. Federal Intermediate Credit Bank of St. Paul, 852 F.2d 242, 246 (7th Cir. 1988) (notes representing loans were not securities governed by § 8-319 but writing was still required to meet terms of § 1-206). Under either UCC section, the alleged oral contract is not enforceable.

3. UIHI/UIH Asia's alleged performance of their obligations under the oral contract is not sufficient to satisfy the statute of frauds.

UIHI/UIH Asia's alleged performance of services in exchange for the purported oral option does not constitute "payment" sufficient to satisfy the statute of frauds. "Payment" under Section 8-319, particularly where the alleged "payment" consists of the performance of services, is a form of the "part performance" exception to the statute of frauds.

To meet this exception to the statute of frauds, the acts making up a party's alleged performance must "be consistent with no theory other than the oral agreement, otherwise it does not tend to prove the latter." Masinton v. Dean, 659 P.2d 50, 53 (Colo. App. 1982); see also Crandall v. Presley, 804 P.2d 272, 274 (Colo. App. 1990) (acts constituting part performance must be "specifically related" to alleged oral contract). While the language used differs somewhat among various jurisdictions, this appears to be a nearly unanimous rule.[6]

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[6] See, e.g., Chevron U.S.A., Inc. v. Schirmer, 11 F.3d 1473, 1478 (9th Cir. 1993) (part performance necessary to take oral contract out of statute of frauds must be unequivocally referable to contract); B & A Pipeline Co. v. Dorney, 904 F.2d 996, 1000 n.10 (5th Cir. 1990) (same); Pelletier, 863 F. 2d 1550, 1555 n.6 (to constitute part performance, conduct "must be specifically referable to, and tend to clearly validate, the existence of the contract"); Horn & Hardart Co. v. Pillsbury Co., 703 F. Supp. 1062, 1072 (S.D.N.Y.), aff'd, 888 F.2d 8 (2d Cir. 1989) (the possibility of attributing actions in takeover contest to explanation other than existence of alleged oral contract precludes a finding actions were

UIHI/UIH Asia erroneously refer to a doctrine of "full performance" (Opp. at 6 n.2) but that is irrelevant because where one party performs all of its obligations under a contract, there is still only "part performance" because the other party has not performed. See Masinton, 659 P.2d at 53 (equating one party's full performance of its obligations with part performance of the contract).

Here, UIHI/UIH Asia assert that their work on the Wharf Cable project after October 6, 1992 was the performance of their obligations under the alleged option to invest. The performance of those acts is, however, entirely consistent with several theories other than the existence of the oral option contract, thus it does not meet the standards required to be part performance.

First, this work is entirely consistent with an interested investor who is both providing services under an agreement to provide assistance in the licensing and implementation processes (as under the Technical Cooperation Agreement), and commenting on what it found in the enterprise as part of its due diligence process.

Second, UIHI injected itself into the project in an (ultimately unsuccessful) attempt to become an equity investor. One alternative explanation for UIHI's actions is that it was continuing to perform work for a project that it hoped to invest in, and to attempt to bolster its perceived importance such that it would later be allowed to invest. This explanation for UIHI's actions is supported by UIHI/UIH Asia's own allegations. UIHI/UIH Asia admit that, even before October 8, 1992, UIHI personnel:

"unequivocally" referable to that agreement).

> at UIHI's expense, began drafting the Franchise application, revising Wharf Cable's business plan, and otherwise providing knowledge and expertise that Wharf needed in connection with the Franchise application.

(Cmplt. ¶ 30). They later admit that, by October 8, 1992 "UIHI already had spent substantial amounts of money and time to assist Wharf." (Id. ¶ 51). UIHI/UIH Asia allege that this work was performed in the expectation that UIHI would be given the opportunity to invest. (Id.) Post-October, 1992 work by UIHI was merely a continuation of that course of conduct.

The existence of the alternative theories to explain UIHI's actions necessarily means that there has been no "part performance" sufficient to satisfy the statute of frauds.

4. There is no valid and enforceable oral contract because UIHI/UIH Asia admit that the parties never reached a meeting of the minds on material terms.

UIHI/UIH Asia's part performance argument fails for another reason. The doctrine of part performance assumes that there is a contract to perform. There is no contract unless there was a "meeting of the minds" on all essential terms of the agreement. Applebaugh v. Hohl, 535 P.2d 222, 224 (Colo. App. 1975) (to have enforceable option "it must appear that further negotiations are not required to work out important and essential terms"); Mile Hi Apartments, Inc. v. Mr. Lucky's Inc., 518 P.2d 854, 855 (Colo. App. 1974) (in order to establish existence of contract, it must appear that parties reached "complete agreement on all essential terms").

An enforceable option agreement must have a set price, a set quantity, and a mechanism for exercising the option.

UIHI/UIH Asia's own allegations establish that the parties did not have an agreement regarding several essential terms of the purported option. First, UIHI/UIH Asia admit that there was no agreement on the terms under which UIHI could exercise the alleged option. (Cmplt. ¶ 54). These terms are "essential" because strict compliance with them is a necessary prerequisite to the effective exercise of an option. Rollins v. City of Northglenn, 690 P.2d 250, 252 (Colo. App. 1984).

Further, the parties here did not reach a complete agreement on other "essential" terms. To give the most obvious example, there was no final agreement on quantity.[7] In exchange for services, UIHI/UIH Asia allegedly received the right to acquire "at least 10%" of the equity of CNCL. (Cmplt. ¶ 53(4)) According to them, the cable franchise now "should be worth hundreds of millions of dollars" (id. ¶ 1) and the option alone was worth "several million dollars." (Opp. at 15). UIHI/UIH Asia then take the preposterous position that, notwithstanding these numbers, the parties had a meeting of the minds even though the parties never reached agreement on the exact size of UIHI or UIH Asia's equity interest. Clearly, the parties would have had to work out the exact number for this essential term before the option would have been enforceable. Under the facts alleged in the Complaint, "at least" 10%" has no upper bound and is therefore not evidence of any agreement. Based upon those allegations, UIHI/UIH Asia may seek damages based upon a claim that they were entitled to acquire 10%, 20% or even 90% of the stock of CNCL.[8]

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[7] Defendants to not concede that there was a final agreement on other essential terms including price, but UIHI/UIH Asia have alleged a final agreement on these terms in their Complaint.

[8] In a tacit admission that defendants correctly pointed out the "agreement" was incomplete, UIHI/UIH Asia abandoned the words "at least 10%" when they wrote their opposition. See Plaintiffs' Opp. at 3 (now asserting there was "a complete deal regarding UIH's right to acquire 10 percent of CNCL") (emphasis added). The Court should rule on the

B. UIHI/UIH Asia's Allegation That They Are Deprived Purchasers Does Not Satisfy The "In Connection With" Requirement To State A Rule 10b-5 Claim.

The allegations of the Complaint also fail to meet the "in connection with" requirement because the gravamen of those allegations is that UIHI/UIH Asia are "deprived purchasers." The key allegation in this regard is in Paragraph 95:

> When the option was granted, these defendants failed to disclose that UIHI would not be permitted to exercise the option or that it was uncertain or would be determined at a later time whether UIHI would be permitted to exercise the option.

(Cmplt. ¶ 95). This is nothing more than an attempt to convert a breach of contract claim (or a claim of anticipatory repudiation) into a federal securities claim. As defendants have already noted, many courts have ruled that such allegations do not state a cause of action under Rule 10b-5.[9]

Predictably, UIHI/UIH Asia assert that "[b]ecause Wharf conveyed the security (the option) with the intent to refuse to permit the option to be exercised, the actual value of the option was considerably less than the value as it was represented." (Opp. at 15). If this allegation were sufficient to state a claim, then any "deprived purchaser" would be able to state a securities claim. Each deprived purchaser would merely plead that with 20/20 hindsight what it thought had value is now not worth anything. That is why many courts have found these allegations do not state a claim.

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pending motion based on the allegations of the Complaint and not the revisionist history UIHI/UIH Asia now offer in their Opposition.

[9] See cases cited in defendants' Motion at 10-12.

The implied cause of action under Rule 10b-5 should not be stretched and distorted so far as to cover these claims. Claims that "simply bespeak frustrations of a private contractual expectancy" should be not brought in this court of limited jurisdiction. Niederhoffer, Cross & Zeckhauser, Inc. v. Testat Sys. Inc., 436 F. Supp. 180, 186-87 (S.D.N.Y. 1977). Plaintiffs such as UIHI/UIH Asia who allege that they are deprived purchasers have common law remedies that they can pursue in a court of general jurisdiction.

The cases that UIHI/UIH Asia cite are not cases where, as here, the only alleged "fraud" concerned the intent to perform the contract to purchase or sell securities. For example, in Richardson v. MacArthur, 451 F.2d 35 (10th Cir. 1971), MacArthur first sold stock to Richardson, helped him to acquire financing for that purchase, and then, MacArthur "acted fraudulently to induce Richardson into giving MacArthur control over the loan and stock, with MacArthur's ultimate intent being the conversion of Richardson's stock." Id. at 41. This "fraudulent scheme" was sufficient to state a Rule 10b-5 claim. On the facts pleaded here, the Tenth Circuit would not follow Richardson v. MacArthur. Similarly, the complaint in Hadsell v. Hoover, 484 F.2d 123, 125 (10th Cir. 1973), included allegations of misstatements or omissions regarding the company's financial statements, its plan to liquidate certain assets to pay off debts and its intent to use proceeds from the sale to pay commissions to certain parties. While these allegations would be sufficient, they are precisely the type of allegations that are conspicuously absent in this case.

II. THIS COURT SHOULD DECLINE TO EXERCISE SUPPLEMENTAL JURISDICTION OVER UIHI/UIH ASIA'S STATE AND COMMON LAW CLAIMS

Nothing UIHI/UIH Asia state in their opposition alters the fact that this Court has the discretion under 28 U.S.C. § 1367(c) to dismiss the state and common law claims. (See Mot. at 13-17). UIHI/UIH Asia have not shown any good reason why this Court should choose to exercise this jurisdiction.

First, the fact that Section 1367(c)(1) uses the term "State" does not mean that issues arising under foreign law are excluded. It is clearly a reference to the jurisdiction that supplies the governing law for the claims. That jurisdiction can also be a foreign state.[10] Second, the question of whether Hong Kong is a State is irrelevant to the question of how these non-federal claims will predominate over the federal claims. 28 U.S.C. § 1367 (c) (2). Third, the choice of law questions that the common law claims will raise support the conclusion that this is a case where "there are other compelling reasons for declining jurisdiction" which the statute expressly recognizes as a reason to decline jurisdiction. 28 U.S.C. § 1367 (c) (4).

CONCLUSION

For all of these reasons, UIHI/UIH Asia have not shown that this Court has federal question subject matter jurisdiction, or, that if it did, it should elect to introduce the clutter that will

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[10] If UIHI/UIH Asia are truly concerned about the ability of the Colorado state courts to resolve issues of Hong Kong law, then they can pursue their common law claims in the Hong Kong arbitration or the Hong Kong courts. UIHI is, after all, a company that has elected to operate exclusively overseas and to maintain only executive offices in this country. UIH Asia has its principal office in Hong Kong. They chose this forum only to make this litigation inconvenient and expensive for defendants.

result from accepting supplemental jurisdiction over UIHI/UIH Asia's state and common law claims. Thus, this Court should dismiss all of the claims.

DATED: February 27, 1995.

Respectfully submitted,

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APPENDIX F

Amended Complaint and Jury Demand
March 27, 1995
U.S. District Court for the District of Colorado
(Aplt. app. 71-99)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 94-N-2560

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation, and UIH ASIA INVESTMENT CO., a Colorado general partnership.

Plaintiffs,

vs.

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company, WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company, WHARF CABLE LIMITED, a Hong Kong Company, and STEPHEN NG, a Hong Kong citizen,

Defendants.

AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs United International Holdings, Inc. ("UIHI) and UIH Asia Investment Co. ("UIH Asia") amend their Complaint and Jury Demand as follows:

Nature of Case

1. This case arises out of federal securities fraud, breach of contract, and other violations of the common law by a Hong Kong-based conglomerate, Wharf Holdings and its subsidiaries. Plaintiffs, a Colorado company and its affiliated general partnership, provided invaluable services that enabled

defendants to develop and implement potentially one of the largest cable television franchises in the world, which now should be worth hundreds of millions of dollars. Based on promises that they had the option to purchase an equity interest in the cable franchise, plaintiffs spent thousands of man hours and approximately U.S. $1 million to provide services to the defendants. Because plaintiffs are investors, rather than consultants, but for these promises, plaintiffs never would have provided these services. Yet, when plaintiffs tried to exercise their option to invest, the defendants refused, contrary to the defendants' specific representations and the parties' agreement.

2. Plaintiff UIHI is in the business of investing in cable television systems internationally. Here, UIHI negotiated for nearly 18 months with the Wharf group of companies, beginning in spring 1991, before reaching agreement with Wharf regarding the right of UIHI or plaintiff UIH Asia to acquire a least 10% of the capital stock of the Wharf subsidiary that would control the cable franchise. UIHI had been seeking this right to invest from the beginning of its relationship with Wharf.

3. By granting UIHI the option to invest, Wharf was able to secure the benefit of UIHI's vast knowledge, expertise and experience in the cable television industry, without which the cable franchise would not have launched in an economically feasible manner. But for Wharf's grant of this option, UIHI would not have agreed to provide Wharf with the services it needed to develop and implement the cable franchise. In reality, Wharf used the promise of the right to invest as a lure to keep UIHI on board, secured all of the knowledge and expertise it needed to launch the cable franchise, and then, once it thought it needed no further help, broke its promises and severed its relationship with UIHI.

4. As a result of wharf's misconduct, plaintiffs have suffered substantial damage, and now seek redress for Wharf's violations of federal and Colorado securities laws, breach of contract, misrepresentations, breaches of fiduciary duties and civil conspiracy.

Parties

5. UIHI is a Delaware corporation with its principal place of business in Denver.

6. UIH Asia is a Colorado general partnership, of which UIHI is the majority owner and managing general partner.

7. The Wharf (Holdings) Limited ("Wharf Holdings")., Wharf Communications Investments Limited ("Wharf Communications"), and Wharf Cable Limited ("Wharf Cable") are Hong Kong companies with their respective registered offices and principal places of business in Hong Kong.

8. Stephen Ng, a Hong Kong citizen, is deputy chairman and/or managing director of Wharf Holdings, Wharf Communications and Wharf Cable. In all matters referenced in this Complaint, Ng had actual and apparent (ostensible) authority to act on behalf of Wharf Holdings, Wharf Communications and Wharf Cable, and acted within the scope of his actual and apparent (ostensible) authority.

9. Wharf Holdings owns 100% of Wharf Communications, which owns 100% of Wharf Cable through an intermediate company, Cable Network Communications Limited ("CNCL"). Ng also is deputy chairman and/or managing director of CNCL.

Jurisdiction and Venue

10. This Court has subject matter jurisdiction under 28 U.S.C. 1331, based on defendants' violations of the Securities Exchange Act, as pleaded in the Fourth and Fifth Claims for Relief, and supplemental jurisdiction over the common law claims under 28 U.S.C. 1367.

11. Because all defendants are aliens, venue is proper in this district under 28 U.S.C. 1391(d).

12. This Court has personal jurisdiction under Section 27 of Securities Exchange Act and under the Colorado long-arm statute, C.R.S. 13-1-124.

13. Each defendant has transacted business in Colorado, within the meaning of C.R.S. 13-1-124(a)(1). Acting on behalf of each defendant, Ng met with representatives of UIHI at UIHI's offices in Colorado in order to work out terms under which UIHI or UIH Asia could invest in Wharf's cable franchise. At one such meeting in October 1992, Ng, on behalf of Wharf Holdings and Wharf Communications, entered into a contract with UIHI, as described in paragraphs 51 through 55 below. As also described below, Wharf Holdings, Wharf Communications and Wharf Cable each transacted business in Colorado via telephone, fax and other communications to Colorado, including communications during which they asked UIHI to provide certain services.

14. Upon information and belief, even before the events from which plaintiffs' claims against Wharf Holdings arose, Wharf Holdings was doing business in Colorado in connection with previous efforts to bring cable television to Hong Kong. In that regard, Wharf Holdings entered into contracts with US West, which upon information and belief, were the result of substantial negotiations between Wharf Holdings and US West

in Colorado, as well as telephone and other communications from Wharf Holdings to US West in Colorado.

15. In addition, each defendant is subject to personal jurisdiction in Colorado under C.R.S. 13-1-124(a)(2). As detailed below, Ng acting on behalf of each defendant, made continuing misrepresentations of fact from summer 1992 of fall 1993, which were directed to UIHI in Colorado; UIHI relied on those misrepresentations in Colorado; and UIHI suffered damage in Colorado as a proximate result of its reliance.

16. Because of their contracts with Colorado, each defendant has minimum contacts with the United States, sufficient to satisfy Fifth amendment due process requirements necessary to sustain personal jurisdiction under Section 27 of the Securities Exchange Act.

General Allegations

The Hong Kong Cable Franchise and UIHI's First Meetings with Wharf

17. In the late 1980's, Wharf Holdings was a part of a consortium of investors called Hong Kong Cable Company ("HKCC"), of which US West also was a member. The Hong Kong government awarded HKCC a license to operate a cable television franchise in Hong Kong. However, because of internal disputes, the consortium collapsed and gave up the franchise before any cable television service was begun.

18. In 1991, the Hong Kong government announced its intention to issue a new request for proposals from persons who would be interested in becoming the exclusive licensee to operate a new cable television franchise (the "Franchise").

19. Wharf Holdings was interested in responding, or causing one of its subsidiaries to respond, to this request for proposals. However, Wharf Holdings and its subsidiaries ("collectively, Wharf") lacked the knowledge, expertise and experience in cable television that would be necessary for Wharf to develop, implement and manage the Franchise successfully. Because of this lack of knowledge, expertise and experience, Wharf Holdings believed that the Hong Kong government might not award the Franchise license to the Wharf applicant.

20. UIHI is in the business of acquiring ownership interests in and managing cable television systems internationally, and has interests in cable and microwave multi-point-distribution-system-delivered subscription services in Ireland, Israel, Hungary, Malta, Norway, Sweden, Chile, Brazil, Thailand, the Czech Republic, Spain and other countries. Through its participation in these operations, and because principals of UIHI have been in the cable television industry for decades, UIHI has acquired a unique range of knowledge, experience and expertise in all aspects of international cable television systems, programming and operations.

21. UIHI's business does not involve providing consulting services for a fee. Rather, UIHI lends it knowledge and expertise only in connection with cable television projects in which it is an investor or has the right to invest.

22. In April 1991, following up on Wharf's previous efforts to work with U.S. companies to bring cable television to Hong Kong, UIHI personnel met with Wharf's managing director, Ng, for the first time. At this initial meeting, the parties discussed the possibility of Wharf Holdings and UIHI cooperating to develop cable television services for various

markets in Asia. The meeting was productive, and both parties agreed that further discussions would be useful.

23. From its first meeting with Wharf onward, UIHI made it clear to Wharf that UIHI's business is investing, not consulting, and that UIHI would be willing to lend its expertise to Wharf only if UIHI acquired the right to invest in the Franchise.

24. By July 1991, building on the discussions at the earlier meeting with Ng, UIHI proposed that Wharf Holdings and UIHI form a joint venture to develop cable television services for various markets in Asia, whereby UIHI would assist Wharf in the development of the Franchise, thus providing the knowledge and expertise that Wharf lacked, and UIHI would be granted the option to purchase an interest in Wharf Cable, the Wharf subsidiary that would be formed to be the Franchise's nominee owner.

25. Wharf was receptive to the concept UIHI proposed. From fall 1991 through spring 1992, the parties continued their discussions, including meetings among Ng and UIHI personnel in Denver in November 1991, as well as meetings at other locations.

26. At the November 1991 meeting in Denver, the parties discussed a proposal under which Wharf would grant UIHI the option to purchase at least 10% of the capital stock of Wharf Cable, in exchange for which UIHI would provide knowledge and expertise to Wharf in connection with Wharf's efforts to develop and implement the Franchise.

Wharf Offers UIHI the Opportunity to Invest in Wharf Cable

27. From late 1991, to mid-1992, the parties continued to explore how they could join forces to apply for, develop, and implement the Franchise, and UIHI provided preliminary comments regarding Wharf's business plan for the Franchise.

28. By June 1992, Wharf Holdings had established a strategy by which it, a company with virtually no experience or expertise in cable television, would nonetheless apply for and win the Franchise. Under this strategy, Wharf Holdings planned to show the Hong Kong government that UIHI would supply the experience and expertise in cable television that Wharf lacked. Wharf Holdings believed through implementation of this strategy, Wharf would have a good chance to win the Franchise.

29. Accordingly, in early June 1992, Ng in telephone conversations and meetings with UIHI personnel including Mark Schneider and Mike Fries, represented that Wharf had determined the following: (1) Wharf Cable would apply for the Franchise; (2) if the Hong Kong government awarded the Franchise to Wharf Cable, UIHI would have the right to purchase at least a 10% equity interest in Wharf Cable; (3) the price for UIHI's interest would be UIHI's pro rata share of the capital contributions for the Franchise; and (4) to help convince the Hong Kong government that Wharf had sufficient knowledge and expertise in cable television, UIHI would be listed in the application as an eventual equity investor who would provide knowledge and expertise in cable television to Wharf. In other telephone conversations and meetings during June-August 1992, Ng reaffirmed this representation to Schneider, Fries and other UIHI personnel.

30. From June to August 1992, UIHI and Wharf worked out other terms under which Wharf Holdings would cause its subsidiary, Wharf Communications, to form a joint venture with UIHI, through which UIHI would have the right to acquire 10% of Wharf Cable's capital stock. Because the parties reached substantial agreement as to the material terms, Wharf directed an attorney to memorialize the parties' agreement, which then would be submitted as part of the Franchise application.

31. In reliance on Ng's representations (as described in paragraph 28), and with the specific understanding that UIHI would be an equity investor, would be listed in the application as a co-investor in the Franchise, and that the parties soon would enter into a written agreement regarding UIHI's investment rights, UIHI personnel, at UIHI's expense, began drafting the Franchise application, revising Wharf Cable's business plan, and otherwise providing knowledge and expertise that Wharf needed in connection with the Franchise application. In providing these services, UIHI also relied on Ng's representations during a telephone conversation in late July 1992 that costs and expenses that UIHI incurred to provide these services would be counted towards UIHI's contemplated equity investment in the Franchise.

32. Time was of the essence because of the Franchise application was due September 30, 1992.

33. Wharf also had been negotiating with NYNEX, the New York "Baby Bell," for NYNEX to join UIHI and Wharf as an investor in Wharf Cable. NYNEX expressed some interest in this proposal, and UIHI had not objection to NYNEX's participation. However, as early as July 1992, NYNEX began to express doubt to Wharf as to whether it would invest.

34. By late August to early September 1992, Wharf decided to form a new company, CNCL, to be the immediate parent of Wharf Cable, and proposed that UIHI and NYNEX acquire stock in CNCL, rather than directly in Wharf Cable. UIHI and NYNEX did not object.

35. Accordingly, instead of documenting the two-party agreement between UIHI and Wharf, Wharf's attorney prepared a three-way agreement to be executed among Wharf Communications, UIHI and NYNEX, pursuant to which UIHI and NYNEX acquire stock in CNCL.

36. Contrary to UIHI's understanding and intent, this agreement, which was to be submitted as part of the franchise application, was drafted to be non-binding. Because it already had begun to commit its personnel and resources to assist Wharf, UIHI had anticipated a binding written agreement specifying UIHI's right to invest, which would be the consideration for the services that Ng indicated Wharf wanted UIHI to continue to provide. Thus, it was unacceptable to UIHI for the documentation to reflect UIHI's agreement with Wharf as non-binding.

37. UIHI stated this concern to Wharf and NYNEX during meetings in mid-September 1992.

38. NYNEX replied that before it could execute a binding agreement, it needed board approval, which it could not obtain until October or November, at the earliest. Moreover, NYNEX began to express additional uncertainty as to whether it wanted to invest in the Franchise at all.

39. Wharf stated that it did not oppose a binding agreement either, but said that because UIHI or NYNEX might not be willing or able to invest. Wharf had begun to re-think the strategy of stating in the application that UIHI and NYNEX

definitely would invest if Wharf Cable won the franchise license.

40. At the same time, Wharf recognized that if it was to have any hope of convincing the Hong Kong government to award the Franchise to Wharf Cable and to implement the Franchise if a license were awarded. Wharf needed UIHI's continued involvement and assistance. Wharf also understood that without a right to invest in the Franchise. UIHI was unwilling to provide the assistance that Wharf needed.

41. Thus, as an alternative to the agreement that Wharf's attorney had drafted to be executed among all three parties. UIHI and Wharf resurrected the previous deal under which Wharf would grant UIHI an option, giving UIHI the right, but not the obligation, to acquire a minimum 10% equity interest in CNCL, in exchange for which UIHI would continue to assist Wharf in connection with the Franchise. Wharf, through Ng and Emil Fung, responded positively, and indicated that Wharf would grant the option that UIHI desired.

42. During these meetings in September 1992, UIHI informed Wharf that UIHI might want to use its affiliate, UIH Asia, to hold te equity interest in CNCL. Wharf, through Ng, represented that Wharf would have no objection if UIH Asia were the investor, rather than UIHI.

43. On September 30, 1992, as a direct result of UIHI's efforts and assistance, Wharf Cable submitted its application for the Franchise to the Hong Kong government.

44. Consistent with the discussions among UIHI, NYNEX and Wharf described in the previous paragraphs, the Franchise application listed UIHI and NYNEX as potential investors in Wharf Cable and as "strategic partners."

45. In addition, NYNEX and UIHI each executed a "Technical Cooperation Agreement," ("TCA"), which stated that NYNEX and UIHI each agreed to provide certain assistance to Wharf Cable, but only if and only after the Hong Kong government awarded the Franchise license to Wharf Cable. The TCA's were intended to assure the Hong Kong government that even though Wharf did not submit an investment agreement with the Franchise application, Wharf would have the assistance of persons who had the knowledge of and expertise in cable television necessary for Wharf to develop and implement the Franchise.

46. The TCA's, which made no provision for compensation for services provided before the Franchise license was awarded, were not intended as a substitute for a deal under which UIHI and possibly NYNEX would invest in CNCL. Both before and after they were executed, Ng represented to UIHI that the TCA that UIHI executed never would become operative, and acknowledged and agreed that the basis for UIHI's relationship with Wharf and its continued willingness to help Wharf to develop the Franchise would continue to be the right to acquire at least 10% equity interest CNCL.

Wharf Affirms the Grant to UIHI and UIH Asia the Option to Invest

47. Wharf Cable's application was the only one submitted. Therefore, the probability was great that Wharf Cable would win the Franchise license.

48. As of fall 1992, Wharf expected the Hong Kong government to award the license in January 1993. Under the conditions for the application, the licensee would be required to launch its cable service within approximately six months after the license was awarded.

49. However, as of September 30, 1992, when it applied for the Franchise, Wharf Cable essentially existed only on paper. Huge amounts of work would have to be completed in a short time if Wharf Cable were to have any hope of launching cable service within he required deadline. Among other things, Wharf Cable would have to negotiate contracts with equipment suppliers, hire experienced senior operations staff, construct the cable system and obtain necessary financing.

50. To accomplish these tasks, and meet the deadline for service launch, Wharf needed UIHI's help.

51. In early October 1992, Ng traveled to Denver for meetings with UIHI, which were held at UIHI's offices. During these meetings, on or about October 8, 1992, Ng asked UIHI to continue to assist Wharf by sending UIHI personnel to Hong Kong to manage the day-to-day operations of Wharf Cable, completing the revision of Wharf Cable's business plan, negotiating with equipment suppliers, analyzing Wharf Cable's programming plan, identifying, evaluating and recruiting permanent senior operations staff for Wharf Cable, and providing other services that Wharf would need as its plans for the Franchise moved forward.

52. In reply, because the documentation of the right to invest had still not been executed, UIHI's president, Mark Schneider, and chief executive officer William Elsner ("Elsner") told Ng that absent confirmation the right of UIHI or UIH Asia to invest, UIHI would be unable to provide any more services to Wharf. Based on Ng's previous representations that a written agreement would be concluded before the submission of the Franchise application, UIHI already had spent substantial amounts of money and time to assist Wharf. Though UIHI had provided the services Wharf

requested, the parties still had not executed the agreement Ng had promised.

53. As Schneider and Elsner told Ng, given the magnitude of the assistance Wharf now was seeking, without confirmation of the right to invest, UIHI could not afford to incur the additional expense necessary to help Wharf or to continue to assign UIHI personnel to Wharf, thus preventing them from pursuing other business opportunities on UIHI's behalf.

54. Accordingly, on October 8, 1992, in order to ensure that UIHI would continue to assist Wharf, Ng, on behalf of Wharf Holdings and Wharf Communications and for the benefit of those entities and Wharf Cable, confirmed the following agreement with Schneider and Elsner, acting on behalf of UIHI:

(1) UIHI had the option, but not the obligation, to purchase, either directly or through UIH Asia, at least 10% of the capital stock of CNCL.

(2) The price for the investment would be UIHI's pro rata share of capital contributions to be made to CNCL, as calculated based on the projected capital requirements of CNCL from the date of license award until ten years thereafter.

(3) Unless extended, the option would expire if UIHI did not inform Wharf of its desire to exercise its option within 180 days following the Hong Kong government's award of the Franchise license to Wharf Cable and UIHI demonstrated its ability to fund UIHI's pro rata share of the projected capital contributions required for Wharf Cable's business for the first 18 months following the award of the Franchise license.

(4) In exchange for the option, UIHI would continue to assist Wharf in connection with the development and implementation of the Franchise.

(5) If the option to invest was exercised, then costs incurred to provide services to Wharf would be credited towards the required capital contributions.

55. The parties confirmed this agreement at UIHI's offices in Denver. The parties' agreement was an oral agreement which they intended to be binding. At this time, the parties also contemplated that they would negotiate and document terms under which UIHI would agree to exercise its option to invest and purchase stock in CNCL. However, because of Wharf's confirmation of the terms stated in paragraph 53. UIHI had the assurance that, at a minimum, it would be able to exercise its option and acquire stock in CNCL on those terms.

UIHI Provides the Requested Services

56. With assurance that it had the option to invest, UIHI was willing to provide the additional help that Wharf needed.

57. Following the October 1992 agreement and continuing until fall 1993, Ng, as well as other Wharf officials, continued to request other assistance from UIHI during face-to-face meetings with UIHI personnel, as well as through telephone and fax communications to UIHI in Colorado.

58. In response to these various requests, in reliance on Wharf's grant of the option to invest, and in performance of the contractual obligations described in paragraph 53(4) above, UIHI caused its personnel in Colorado and abroad to provide the following services to Wharf, among many others:

(1) completely rewrote the business plan for Wharf Cable, which in its initial form contained numerous unfounded assumptions and underscored Wharf's fundamental lack of knowledge and competence in the cable television industry;

(2) negotiated on Wharf's behalf with UIHI's U.S. suppliers which, based on the understanding that UIHI had the option to invest, were willing to sell cable television equipment to Wharf at special prices normally reserved for UIHI, thus saving Wharf millions of dollars;

(3) saved Wharf millions of dollars by convincing Wharf to use converter boxes instead of unproven "smart card" technology, which is disastrous in its current applications;

(4) reworked Wharf's cable network design to achieve substantial improvements in frequency selection and to include hubs to which fiber optics could be attached, thus enabling Wharf to transmit cable signals over telephone lines;

(5) completely revised Wharf's marketing plan from the high risk approach of selling converter boxes and smart cards at corner shops to owning and controlling the converters;

(6) designed and implemented an MIS system for Wharf Cable;

(7) saved Wharf millions of dollars by renegotiating vendor contracts with DEC and Cable Data;

(8) sent UIH personnel to Hong Kong to manage the day-to-day operations of Wharf Cable, including among others, UIHI's head of Asian operations, Bill Pittman, who served as Wharf Cable's Chief Operating Officer, and Blake Williams, who served as Wharf Cable's Chief Engineer;

(9) identified, pre-screened, interviewed and sent to Wharf Cable for hire a permanent chief operating officer, as well as key permanent engineering staff;

(10) advised Wharf in connection with its negotiations with programming suppliers and commented on Wharf's programming investment plan; and

(11) assembled and led a consortium of international lenders to Hong Kong to provide financing for Wharf Cable.

59. Overall, in response to Wharf's requests for services, UIHI devoted thousands of man hours and incurred approximately $1 million U.S. dollars in out-of-pocket costs.

60. Following the October 1992 agreement with UIHI and continuing until fall 1993, Wharf, through Ng, continued explicitly to reaffirm UIHI's right to invest in meetings and telephone conversations with various UIHI and UIH Asia personnel, including without limitation, Schneider, Elsner, Mike Fries, Gene Schneider, David D'Ottavio, Bill Hudon, Bill Pittman and William Ng.

Wharf Refuses to Permit UIHI to
Exercise its Option to Invest

61. By or before January 1993, NYNEX had indicated that it definitely no longer desired to invest in the Franchise.

62. In further reliance on Wharf's grant of the option to invest, from late 1992 until late summer, UIHI worked with Ng and Emil Fung of Wharf to finalize and document terms under which UIHI would exercise its option and consummate its investment in CNCL. These terms were substantially similar to those which UIHI and Wharf had been discussing snice the beginning of thei relationship and regarding which NG always had represented Wharf had no material objections. Throughout these discussions, Wharf did nothing to suggest that it was anything other than fully committed to honoring UIHI's right to invest.

63. On June 1, 1993, the Hong Kong government awarded the Franchise license to Wharf Cable.

64. By August 1993, UIHI had resolved all material outstanding issues with Wharf regarding the exercise of UIHI's option to invest. Further, UIHI had successfully completed a public stock offering, and thus had the capital it needed to acquire stock in CNCL. Accordingly, in August 1993, UIHI informed Ng that UIHI had the capital it needed and was ready to exercise its option to purchase 10% of the stock of CNCL.

65. Rather than honoring UIHI's exercise of its option to invest, Ng claimed that UIH's right to invest was subject to the approval of "his board," and that because of the number of tasks that remained to be completed before the launch of Wharf Cable's television service, the investment would need to be delayed.

66. This was the first time that Ng ever claimed that "board approval" would be needed before UIHI could acquire 10% of the stock of CNCL. Indeed, Ng had always represented that he had full authority to grant UIHI the option to invest on the terms described above.

67. Wharf Cable launched its television services in November 1993.

68. In April 1994, Schneider and Elsner traveled to Hong Kong to attend a meeting with Wharf Holdings' board. Approximately 2-3 hours after that meeting, Ng, apparently with the agreement of the other directors, told Schneider and Elsner that Wharf had decided that it did not want "to take on a partner at this time."

69. Following this meeting, though UIHI continued to demand that it be allowed to exercise its right to invest, and was ready, willing and able to invest on the terms agreed when the option was granted, Wharf still refused.

First Claim for Relief--Breach of Contract
(Against Wharf Holdings and Wharf Communications)

70. Plaintiffs incorporate the allegations in paragraphs 1 through 69, as if fully set forth herein.

71. Wharf Holdings and Wharf Communications granted UIHI an option, pursuant to which UIHI or UIH Asia had the right to purchase at least 10% of the capital stock of CNCL. In consideration for this option, UIHI was obligated, upon request, to continue to advise and assist Wharf in connection with the development and implementation of the Franchise.

72. Though UIHI performed its side of the bargain by providing the requested services, plaintiffs were refused the right to excerise the option and invest in CNCL.

73. By refusing to permit the exercise of the option, Wharf Holdings and Wharf Communications breached their contractual obligations to plaintiffs.

74. As a result of this breach, plaintiffs have suffered damages, including the loss of the benefit of their bargain under the contract, as well as incidental and consequential damages, including out-of-pocket losses and lost profits, in an amount to be proved at trial.

75. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Second Claim for Relief--Promissory Estoppel
(Against All Defendants)

76. Plaintiffs incorporate the allegations in paragraphs 1 through 75, as if fully set forth herein.

77. In making the promises detailed in paragraphs 29, 31, 54 and 60 above, Ng at all times was acting as the authorized agent of Wharf Holdings, Wharf Communications, and Wharf Cable.

78. When Ng made these promises, Ng reasonably should have expected to induce plaintiffs to rely on them.

79. UIHI relied to its detriment by incurring out-of-pocket expenses, committing its resources to assist Wharf, and foregoing other business opportunities in order to meet its obligations to Wharf.

80. In further reliance, UIH Asia credited UIHI for certain of the dollar amounts that UIHI spent to assist Wharf as a capital contribution from UIHI to UIH Asia. If UIH Asia had been permitted to exercise its right to invest, these amounts

would have been contributed as a capital contribution from UIH Asia to CNCL.

81. Plaintiffs' reliance was justified.

82. Injustice can be avoided only through the award of damages to plaintiffs, in an amount to be proved at trial.

83. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Third Claim for Relief--Unjust Enrichment/ Quasi-Contract
(Against Wharf Holdings, Wharf Communications and Wharf Cable)

84. Plaintiffs incorporate the allegations in paragraphs 1 through 83, as if fully set forth herein.

85. By providing the extensive services described in the previous paragraphs, UIHI conveyed substantial benefits upon Wharf Holdings, Wharf Communications and Wharf Cable, which saved these defendants millions of dollars and increased the Franchise's worth by millions of dollars.

86. When it conferred these benefits, UIHI had the expectation of payment in the form of the right for it or UIH Asia to purchase at least 10% of the stock of CNCL.

87. Wharf Holdings, Wharf Communications and Wharf Cable accepted and retained the substantial benefits that UIHI conferred upon them, but have paid plaintiffs nothing and have

refused to permit either plaintiff to purchase any interest in CNCL.

88. It would be inequitable if these defendants were permitted to retain these benefits without paying for the value defendants received. Otherwise, these defendants would be unjustly enriched.

89. Accordingly, plaintiffs are entitled to an award of money equal to the value of the benefits conferred upon Wharf Holdings, Wharf Communications and Wharf Cable.

90. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Fourth Claim for Relief--Violation of Rule 10(b)(5) of the Securities Exchange Act
(Wharf Holdings, Wharf Communications and Ng)

91. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 90, as if fully set forth herein.

92. The grant of the option to acquire at least 10% of the stock of CNCL was the sale of a security to UIHI, within the meaning of the Securities Exchange Act.

93. In the negotiation of, and otherwise in connection with this sale, Wharf Holdings, Wharf Communications and Ng used the mails and instrumentalities of interstate commerce, including telephone and fax.

94. As detailed in paragraph 52 above, at the time UIHI was granted the option, Wharf Holdings and Wharf

Communications, through Ng, represented that UIHI would be entitled to exercise the option and purchase directly or through UIH Asia at least 10% of the stock of CNCL. As detailed in paragraph 58, Ng continually repeated this representation in subsequent conversations with UIHI personnel.

95. These representations were false when made, and were part of a ploy designed to secure the benefit of UIHI's knowledge and expertise in the cable television industry. At the time of the representations, these defendants either did not intend ever to permit the option to be exercised or did not know or intended to determine at a later time whether exercise of the option would be permitted.

96. When the option was granted, these defendants failed to disclose that UIHI would not permitted to exercise the option or that it was uncertain or would be determined at a later time whether UIHI would be permitted to exercise the option. By failing to make this disclosure, these defendants omitted to state facts necessary in order to make Ng's statements to UIHI, in light of the circumstances under which they were made, not misleading.

97. The facts misstated, as well as the facts not disclosed, were material to UIHI, and would have been material to any other reasonable investor in the same position as UIHI.

98. In making the misrepresentations described above, these defendants acted knowingly, or at a minimum, with reckless disregard to the truth or falsity of the statements made. These defendants were aware of the material facts that were not disclosed and knew or should have known their significance to UIHI's decision to acquire the option.

99. At the time it acquired the option, UIHI did not know, and had no reason to suspect, the truth of the facts

misrepresented or the existence of the facts that were not disclosed.

100. UIHI reasonable and justifiably relied on the misrepresentations and on the non-existence of the facts that were not disclosed.

101. As a proximate result of its reasonable reliance, UIHI suffered damages, including damages equal to the difference between the value of the option if the misrepresentations had been true and the option's actual value, as well as out-of-pocket losses and consequential damages for the loss of other business opportunities, in an amount to be proved at trial.

102. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Fifth Claim for Relief--Violation of Section 20(a) of the Securities Exchange Act
(Against Wharf Holdings and Wharf Communications)

103. Plaintiffs incorporate the allegations of paragraphs 1 through 102, as if fully set forth herein.

104. As the sole share holder of Wharf Communications and Ng's employer, Wharf Holdings is a person which directly or indirectly controls persons liable for the violations of Rule 10(b)-5 alleged in Fourth Claim for Relief.

105. As Ng's employer, Wharf Communications is a person which directly or indirectly controls persons lible for the violations of Rule 10(b)-5 alleged in the Fourth Claim for Relief.

106. As "controlling persons" under Section 20(a) of the Securities Exchange Act, and a culpable participant in these violations, Wharf Holdings and Wharf Communications are jointly and severally liable.

107. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Sixth Claim for Relief--
Violations of C.R.S. 11-51-604(3)
(Against Wharf Holdings, Wharf Communications and Ng)

108. Plaintiffs incorporate the allegations of paragraphs 1 through 105, as if fully set forth herein.

109. The conduct of Wharf Holdings, Wharf Communications and Ng alleged in paragraphs 91 through 102 violates C.R.S. 11-51-01(1)(a), (b) and (c).

110. As a result, UIHI is entitled to relief as provided under C.R.S. 11-51-604(3), including damages in an amount to be proved at trial, interest at the statutory rate, costs, nd reasonable attorneys' fees.

111. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Seventh Claim for Relief--Violations of C.R.S. 11-51-604(4)
(Against Wharf Holdings, Wharf Communications and Ng)

112. Plaintiffs incorporate the allegations of paragraphs 1 through 111, as if fully set forth herein.

113. The conduct of Wharf Holdings, Wharf Communications and Ng alleged in paragraphs 91 through 102 violates C.R.S. 11-51-501(1)(b).

114. When Wharf Holdings and Wharf Communications granted the option to UIHI, these defendants each knew the untruth of the misrepresentations and omissions, and therefore cannot sustain the burden of proof that they did not know, and in the exercise of reasonable care could not have known, the untruth of the misrepresentations and omissions.

115. As a result, UIHI is entitled to relief as provided under C.R.S. 11-51-604(4), including damages in an amount to be proved at trial, interest at the statutory rate, costs, and reasonable attorneys' fees.

116. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Eighth Claim for Relief--
Violations of C.R.S. 11-51-604(5)(b)
(Against Wharf Holdings and Wharf Communications)

117. Plaintiffs incorporate the allegations of paragraph 1 through 116, as if fully set forth herein.

118. Wharf Holdings and Wharf Communications are persons which, directly or indirectly, control a person liable for violations of C.R.S. 11-51-604(3) and (4) that are alleged in the Sixth and Seventh Claims for Relief.

119. As a "controlling person" under C.R..S. 11-51-604(5)(b), and a culpable participant in these violations, Wharf Holdings and Wharf Communications are jointly and severally liable.

120. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Ninth Claim for Relief--Fraud
(Against All Defendants)

121. Plaintiffs incorporate the allegations in paragraphs 1 through 120, as if fully set forth herein.

122. As peviously alleged in paragraphs 29, 31, 54 and 60, Ng, acting on behalf of each of the defendants, made false statements of material fact regarding plaintiffs' right to invest and Wharf's intention to permit UIHI or UIH Asia to invest.

123. At the time he made these misrepresentations, Ng knew that the misrepresentations were false or was aware that he did not know whether they were true or false, but he did not disclose this to plaintiffs.

124. Ng made the misrepresentations with the intent that plaintiffs act in reliance on them, and knew that plaintiffs were within the zone of persons who reasonably could be expected to act in reliance on them.

125. Plaintiffs relied on the misrepresentations and on the absence of any contrary disclosure regarding the facts mispresented.

126. Plaintiffs' reliance was justified.

127. As a proximate result of this reasonable reliance, plaintiffs suffered damages in an amount to be proved at trial, including damages equal to the difference between the value of the option if the representations had been true and the option's actual value, as well as out-of-pocket losses and consequential damages for the loss of other business opportunities.

128. The conduct of defendants in making the mispresentations was willful, wanton and in disregard of plaintiffs' rights, thereby entitling plaintiffs to an award of punitive damages.

129. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Tenth Claim for Relief--Negligent Misrepresentation
(Against Wharf Holdings and Wharf Communications)

130. Plaintiffs incorporate the allegations of paragraphs 1 through 129, as if fully set forth herein.

131. As described above, Ng, acting on behalf of Wharf Holdings and Wharf Communications, communicated false information to UIHI.

132. Ng communicated this information in connection with these defendants' business and transactions in which they had

financial interest (the development and implementation of the Franchise).

133. Ng gave this information to UIHI for its use in deciding to provide services to Wharf Cable.

134. Ng was negligent in obtaining or communicating the false information.

135. He gave this information with the intent and knowing that plaintiffs would act in reliance on the information.

136. Plaintiffs relied on the information Ng supplied.

137. Plaintiffs' reliance was justified.

138. As a proximate result of this reasonable reliance, plaintiffs suffered damages in an amount to be proved at trial, including damages equal to the difference between the value of the option if the representations had been true and the option's actual value, as well as out-of-pocket losses and consequential damages for the loss of other business opportunities.

139. The conduct of defendant in making the misrepresentations was willful, wanton and in disregard of plaintiffs' rights, thereby entitling plaintiffs to an award of punitive damages.

140. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Eleventh Claim for Relief--Breach of Fiduciary Duty
(Against Wharf Holdings and Wharf Communications)

141. Plaintiffs incorporate the allegations of paragraphs 1 through 140 as if fully set forth herein.

142. UIHI negotiated with Wharf Holdings and Wharf Communications to form a joint venture or partnership whereby UIHI or UIH Asia would invest in CNCL.

143. Fiduciary duties between UIHI and these defendants arose as a result of these negotiations.

144. As a fiduciary, these defendants owed UIHI a duty of the utmost honesty, loyalty and good faith, with regard to matters pertaining to the potential partnership.

145. By misrepresenting material facts, by failing to permit UIHI to exercise its option to invest, and by failing to make timely disclosure of their true intentions regarding UIHI's option to invest, these defendants breached their fiduciary duties to UIHI.

146. As a proximate result of these breaches, UIHI suffered damages, in an amount to be proved at trial.

147. The conduct of defendants in breaking their fiduciary duties was willful, wanton and in disregard of plaintiffs' rights, thereby entitling plaintiffs to an award of punitive damages.

148. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

Twelfth Claim for Relief--Civil Conspiracy
(Against Wharf Holdings, Wharf Communications and Wharf Cable)

149. Plaintiffs incorporate the allegations of paragraphs 1 through 148, as if fully set forth herein.

150. Defendants knew that UIHI would provide the services they needed in connection with Franchise only if UIHI believed that it or UIH Asia would be able to acquire, directly or through CNCL, at least 10% of the capital stock of Wharf Cable.

151. Accordingly, in order to acquire these services, defendants conspired to induce UIHI into believing that it or UIH Asia had the right to invest, even though defendants did not intend to permit either plaintiff to invest, or did not know whether either plaintiff would be permitted to invest.

152. In furtherance of the conspiracy, defendants falsely promised the right to invest and continued to explicitly and implicitly assure plaintiffs they would be able to consummate this investment.

153. In furtherance of the conspiracy, defendants falsely promised the right to invest and continued to explicitly and implicitly assure plaintiffs that they would be able to consummate this investment.

154. As a proximate result of defendants' conduct, plaintiffs suffered damage, in an amount to be proved at trial.

155. The conduct of defendants was willful, wanton and in disregared of plaintiffs' rights, thereby entitling plaintiffs to an award of punitive damages.

156. All conditions precedent to this claim have occurred or been fulfilled.

WHEREFORE, plaintiffs pray for the relief set forth below.

PLAINTIFFS PRAY FOR JUDGMENT IN THEIR FAVOR AND AGAINST DEFENDANTS AS FOLLOWS:

A. Actual damages suffered, including without limitation, the loss of the benefit of the bargain in the contract for the purchase of the option, the difference between the actual value of the option and the value if the representations had been true, out-of-pocket losses, as well as lost profits that would have been received as a result of the investment in CNCL.

B. Punitive damages, to the maximum extent permitted by law;

C. Pre-judgment and post-judgment interest, to the maximum extent permitted by law.

D. Costs, attorneys' fees and expert witness fees, to the maximum extent permitted by law; and

E. Any other relief that the Court deems proper.

PLAINTIFFS DEMAND A JURY ON ALL CLAIMS SO TRIABLE.

Respectfully submitted,

HOLME ROBERTS & OWEN LLC
Jeffrey A. Chase
David Bruce Wilson

Daniel P. Maguire

/s/ David Bruce Wilson
1700 Lincoln Street, #4100
Denver, Colorado 80203
303-861-7000
D.C. BOX 07

Attorney for Plaintiffs

Address of Plaintiffs:

4643 South Ulster Street, Suite 1300
Denver, Colorado 80237

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of March, 1995, a true and correct copy of the foregoing **Amended Complaint and Jury Demand** was deposited in the United States mail, postage prepaid and addressed to :

Andrew J. Petrie, Esq.
Scott R. Bauer, Esq.
Kirkland & Ellis
1999 Broadway, Suite 1000
Denver, CO 80202

/s/

APPENDIX G

Motion to Dismiss all of Plaintiffs' Claims Pleaded in the Amended Complaint for Lack of Subject Matter Jurisdiction

April 13, 1995

U.S. District Court for the District of Colorado

(Aplt. App. 118-126)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 94-N-2560

UNITED INTERNATIONAL HOLDINGS, INC., a Delaware corporation, and UIH ASIA INVESTMENT CO., a Colorado general partnership,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, a Hong Kong company, WHARF COMMUNICATIONS INVESTMENTS LIMITED, a Hong Kong company, WHARF CABLE LIMITED, a Hong Kong company, and STEPHEN NG, a Hong Kong citizen,

Defendants.

MOTION TO DISMISS ALL OF PLAINTIFFS' CLAIMS PLEADED IN THE AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

Despite taking advantage of their opportunity to amend their complaint as a matter of right because of the fact that defendants have not yet answered, plaintiffs' claims still do not give this Court subject matter jurisdiction. Defendants therefore again move pursuant to Rule 12 (b) (1) to dismiss all of plaintiffs' claims for lack of subject matter jurisdiction.

Defendants will address here only how plaintiffs' amended allegations or the absence of any new allegations does not

change the jurisdictional analysis. Defendants restate and incorporate in this motion all of the grounds in their January 17, 1995 motion to dismiss all of the claims and their reply in support of that motion.

1. By Their Amendments, Plaintiffs Reaffirm Their Earlier Admission That This Court Never Had Diversity Jurisdiction

This Court never had diversity jurisdiction. While plaintiffs initially tried to invoke this Court's diversity jurisdiction, both parties now agree that one of the plaintiffs and all of the defendants are citizens of Hong Kong.

Plaintiffs amended their complaint to delete any reference to 28 U.S.C. § 1332. (1st Amended Cmplt. ¶ 10). They, therefore, do not recant their admission -- which they only belatedly made in response to defendants' original motion to dismiss -- that they had failed to properly plead diversity and that the facts available to them at the time they filed their complaint proving there never was diversity jurisdiction.

2. Despite Their Amendments, Plaintiffs Still Do Not Plead Any Proper Claims Under Sections 10 Or 20 Of The 1934 Act Or Under Rule 10b-5

There is no federal question jurisdiction because plaintiffs have not stated a valid claim under the 1934 Securities Exchange Act. Each of their claims requires that they plead a violation of Rule 10b-5. While plaintiffs now plead very different facts about when and how an alleged agreement was reached, plaintiffs' basic allegation remains the same: The defendant companies, acting through Stephen Ng, reneged on an oral agreement providing UIHI an option (or the right, but not the obligation) to purchase an interest in a company that was to be created to bid for, acquire, own and construct a cable

television system in Hong Kong. (1st Amended Cmplt. ¶¶ 29-30, 52-54). Notwithstanding their amendments, plaintiffs UIHI and UIH Asia still fail to state a valid securities claim because they allege only that defendants failed to perform an option contract -- they fail to allege fraud "in connection with the purchase or sale of a security."[1]

UIHI and UIH Asia continue to allege that one or more of the defendants entered into an oral agreement granting UIHI an option to purchase or the "right to acquire" at least 10% of a company's equity. (Id. ¶ 29-30). However, UIHI and UIH Asia no longer allege that the parties reached this oral agreement at UIHI's offices in Denver. (Id.). Instead, they now allege that it was reached somewhere else. (See id.). They point to no written communication with defendants confirming the existence of any such agreement.

This alleged oral contract for the sale of an equity interest or securities is not enforceable. Colo. Rev. Stat. § 4-8-319 (1992). See also Kiely v. St. Germain, 670 P.2d 764, 769 (Colo. 1983) (statute prohibits sale or purchase of "this type of asset in the absence of a complete written agreement concerning the essential terms of such transaction"). Here, UIHI and UIH Asia allege that the parties agreed orally to certain things, but they admit that at the time of the alleged oral contract not all of the terms had been agreed to and the parties contemplated they would need to document the terms under which UIHI "would have the right to acquire" equity. (1st Amended Cmplt. ¶ 30). Thus, in this case, no terms of the

---

[1] Defendants move to dismiss these claims both for failure to state a claim under Rule 12 (b) (6) and for lack of subject matter jurisdiction under Rule 12 (b) (1). UIH and UIH Asia's failure to state a valid securities claim necessarily means that this Court lacks subject matter jurisdiction. E.g., Hunt v. Robinson, 852 F.2d 786, 786-87 (4th Cir. 1988) (no federal question jurisdiction where complaint failed to state federal cause of action under Section 10(b)).

purported contract were reduced to writing nor were they even referenced in any writing, and plaintiffs admit that the parties never agreed to terms which defendants submit are "essential" -- the terms under which UIHI could exercised the alleged option. Under these circumstances, even as amended, this Court should find that there was no enforceable contract.[2]

The alleged existence of an unenforceable contract to purchase a security as a matter of law cannot support a Rule 10b-5 claim. See, e.g., Kagan v. Edison Bros. Stores, Inc., 907 F.2d 690, 691 (7th Cir. 1990) (granting motion to dismiss Rule 10b-5 claim because "principles animating [statute of frauds] and the doctrine of Blue Chip Stamps alike require a conclusion that an unenforceable oral agreement is not a 'contract' to purchase or sell securities"); Pelletier v. Stuart-James Co., Inc., 863 F.2d 1550, 1555-56 (11th Cir. 1989) (alleged oral contract was unenforceable; alleged fraudulent refusal to perform contract could not form basis for Rule 10b-5 liability); Southeastern Waste Treatment, Inc. v. Chem-Nuclear Sys., Inc., 506 F. Supp. 944, 951 (N.D. Ga. 1980) (Rule 10b-5 claimant must demonstrate that he is either actual purchaser/seller or that he was party to legally enforceable contract to purchase or sell securities; there is "simply no convincing argument which can be made to equate an unenforceable contract with a sale").[3]

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[2] An oral agreement to purchase stock is not enforceable. See, e.g., Bright v. QSP, Inc., 20 F.3d 1300, 1305 (4th Cir. 1994) (West Virginia law), cert. denied, 115 S. Ct. 202 (1994); Levinson v. Charbonnet, 977 F.2d 930, 932-33 (5th Cir. 1992) (Louisiana law); Joseph E. Seagram & Sons, Inc. v. Shaffer, 310 F.2d 668, 673-74 (10th Cir. 1962) (Oklahoma law), cert. denied, 373 U.S. 948 (1963); Sandler v. Marconi Circuit Tech. Corp., 814 F. Supp. 263, 267 (E.D.N.Y. 1993) (New York law); Haught v. Lante Corp., 1991 WL 148198, at *3 (N.D. Ill. 1991) (applying to Illinois law); Young v. Simpson, 607 F. Supp. 67, 69 (E.D. Tex. 1985) (Texas law).

[3] Cf. Chariot Group, Inc. v. American Acquisition Partners, L.P., 751 F. Supp. 1144, 1149 (S.D.N.Y. 1990), aff'd, 932 F.2d 956 (2d Cir.

While courts have broadly interpreted the words "in connection with" the purchase of a security, Technology Exch. Corp. of Am., Inc. v. Grant County State Bank, 646 F. Supp. 179, 182 (D. Colo. 1986), they should not extrapolate them so far as to encompass these plaintiffs' claims. The Supreme Court has held that a court should be reluctant to imply a Rule 10b-5 cause of action for wrongs that do not fall within the fundamental purpose of Section 10(b), which requires full and fair disclosure to participants in securities transactions of information that would be useful to them in deciding whether to buy or sell securities. Santa Fe Indus., Inc. v. Green, 430 U.S. 462, 477-78 (1977). That is not what is involved here. Courts have therefore rejected as not sufficient allegations exactly those such as UIHI and UIH Asia assert -- that a seller has reneged on a contract to sell securities. The mere breach of a contract to sell securities does not give rise to a federal securities claim simply because the disappointed purchaser alleges that the seller lied about his intent to fulfill the contract. Deprived purchasers can and should be limited to their common law remedies. See, e.g., Gurwara v. LyphoMed, Inc., 937 F.2d 380, 381-82 (7th Cir. 1991); Hunt, 852 F.2d at 787 (common law claims should not be transformed into federal claims "simply because the object of the bargain was shares of stock;" alleged fraud lay, not in actual sale of stock, but rather in defendants' refusal to tender shares as required by terms of contract); Tully v. Mott Supermarkets, Inc., 540 F.2d 187, 194 (3d Cir. 1976) (no Rule 10b-5 claim where gravamen of complaint was that plaintiffs were deprived purchasers); R.H. Damon & Co., Inc. v. Softkey Software Prod. Inc., 811 F. Supp. 986, 992 (S.D.N.Y. 1993) (fraud through alleged misrepresentations regarding terms and validity of option agreement did not meet "in connection with" requirement).

1991) (even an oral contract may be sufficient to provide basis for 10b-5 claim if it reflects meeting of minds; but holding that no contract existed where, as here, parties intended to be bound only by a written agreement).

Thus, even the amended complaint pleads nothing more than a failure to perform a contractual obligation. This Court, therefore, should dismiss UIHI's and UIH Asia's Rule 10b-5 claim because the mere allegation that they were deprived purchasers of an option or "right to invest" (as they try to recast it) is not sufficient to meet the "in connection" requirement of Rule 10b-5. Moreover, this Court should find that it lacks federal question jurisdiction over any such claims because plaintiffs fail to state a valid federal cause of action.

3. There Is No Basis To Exercise Supplemental Jurisdiction Over This Hong Kong-Centered Dispute

Even if the Court finds plaintiffs have stated a valid 1934 Act claim as they have amended their allegations, they have still not pleaded common law or Colorado statutory claims over which this Court should exercise supplemental jurisdiction. The Court should dismiss those claims under 28 U.S.C. § 1367 because they: (i) involve novel and complex issues of law; and (ii) substantially predominate over plaintiffs' federal claims.

Defendants continue to ask this Court to dismiss this case in its entirety. Yet, even if the Court were to find that plaintiffs have adequately alleged claims under Sections 10(b) and 20(a) of the 1934 Act, this Court should exercise its discretion to decline to exercise supplemental jurisdiction over the ten state and common law claims. Even after plaintiffs' amendments, UIHI's and UIH Asia's state and common law claims raise numerous novel and complex questions of law that will unduly prolong and complicate this action, and those ten non-federal claims will predominate over the two federal securities claims.

Plaintiffs have now amended the complaint to change the alleged agreement which is central to their case from one reached in Denver, to one reached elsewhere. Thus, it is even more apparent that Hong Kong has the most significant

relationship to the parties and the transactions that are at issue here, than was even the case before. Moreover, plaintiffs' amendments do nothing to resolve the "distinct and foreign" elements of proof that their ten supplemental claims required versus the two federal securities claims, including: (1) varying nexuses between Section 10(b) of the 1934 Act and Rule 10b-5, versus the Colorado Act; (2) varying availability of punitive damages under the federal versus common law claims; and (3) varying availability of attorneys' fees in a Rule 10b-5 action versus the Colorado Securities Act.

CONCLUSION

Plaintiffs still have not stated a valid federal securities claim because they have not pleaded fraud "in connection with the purchase or sale of a security." The most that they plead is an oral agreement, which is not enforceable as a matter of law. Moreover, the alleged fraud relates only to the breach of that supposed agreement and does not relate to the value of the option or any other attributes of a security that Congress and the SEC intended the 1934 Act and Rules to protect.

The ten state and common law claims predominate over the two federal securities claims. They introduce novel and complex issues involving choice of law analyses, the application of Hong Kong statutory and common law, and an effort to engraft expanded state law remedies onto the federal statutes. While standing alone these are each reasons for this Court to decline to accept jurisdiction, they together compel the result that this Court should not exercise Section 1367 supplemental jurisdiction.

WHEREFORE, for all of these reasons, and those set forth in their January 17 motion and their reply, defendants request that the Court dismiss the federal securities claims for lack of subject matter jurisdiction and failure to state a claim, and

decline to exercise supplemental jurisdiction over plaintiffs' state and common law claims.

DATED: April 13, 1995.

Respectfully submitted,

KIRKLAND & ELLIS

/s/ Scott R. Bauer

Andrew J. Petrie
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1999 Broadway, Suite 4000
Denver, Colorado 80202
(303) 291-3000
D.C. Box 09

Attorneys for defendants The Wharf (Holdings) Limited, Wharf Communications Investments Limited, Wharf Cable Limited and Stephen Ng

APPENDIX H

UIH v. Wharf: Damage Assessment by Robert M. Jones, President, Malarkey Taylor Associates, Inc. (MTA)

UIH Damages Expert Report

July 7, 1995

U.S. District Court for the District of Colorado

(Add. 645-683)

Holme Roberts & Owen LLC
ATTORNEYS AT LAW

Boulder
Colorado Springs
Denver
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London
Moscow

1700 Lincoln
Suite 4100
Denver, CO 80203
303 861-0200

David R. Wilson
303 866-0693

July 7, 1995

VIA HAND DELIVERY

Andrew J. Petrie, Esq.
Kirkland & Ellis
1999 Broadway, Suite 4000
Denver, CO 80203

Re: United International Holdings, Inc., et al. v.
The Wharf (Holdings) Limited, et al.

Dear Drew:

Pursuant to F.R.C.P. 26(a)(2)(B), enclosed please find the report of Robert M. Jones, whom plaintiffs intend to call as a testimonial expert at trial.

Pursuant to F.R.C.P. 26(a)(2)(A), please be advised that plaintiffs may also use the following persons to present evidence at trial under F.R.E. 702, 703 or 705 regarding implementation and/or operation of a cable television system and all aspects thereof, financing of a cable television system and all aspects thereof, financing generally, programming of a

cable television system and all aspects thereof, and business transactions in Hong Kong:

Mark Schneider
Mike Fries
William Elsner
Gene Schneider
David D'Ottavio
R.W. Pittman
Warren Mobley
Paul Case
William Hudon
Blake Williams
Ellen Spangler
Bernard Dvorak
Simon Sutton
Clive Ng
William Ng
Steve Moss
Pandora Pang
Henry Van Demark
Mark Booth (possible rebuttal)

Sincerely,

HOLME ROBERTS & OWEN LLC

/s/ David B. Wilson

David B. Wilson

DBW:sd
Enclosure

UIH vs WHARF
DAMAGE ASSESSMENT
by
ROBERT M. JONES, PRESIDENT
MALARKEY-TAYLOR ASSOCIATES, INC. (MTA)

I. Conclusions

Malarkey-Taylor Associates, Inc. (MTA), was requested by Holme Roberts & Owen L.L.C. (Counsel), counsel to United International Holdings, Inc. and UIH Asia Investment Company, Limited (collectively called "UIH"), to assess some of the financial damages experienced by UIH in the case of UIH vs Wharf (Holdings) Limited, et al, pending in The United States District Court in Denver, Colorado. I have utilized a detailed valuation model that accounts for the projected revenues, operating expenses and capital expenditures, and applies generally accepted valuation methodologies to yield valuation results and damage calculations. Based on my financial analysis I have reached the following conclusions.

Categories of Damage		(U.S. $ Dollars)
1. Breach of Contract		$ 67,000,000
2. Fraud		$ 50,000,000
3. Unjust Enrichment		
a. Eliminate "Hot Drops"	$ 55,500,000	
b. Decoder Rentals vs Sales (minimum)	$ 24,000,000	
c. Set-Top Box Purchases (minimum)	$ 42,000,000	
Total Unjust Enrichment		$121,500,000

II. Introduction

Purpose of study

As President of MTA, I was retained by Counsel, to determine some of the financial damage incurred by UIH as a result of breach of contract, fraud and unjust enrichment committed by a Hong Kong-based conglomerate, Wharf Holdings and its subsidiaries with respect to the licensing, development,

construction, operation and ownership of a cable television system in Hong Kong.

Qualifications of MTA

MTA has thirty years of experience in analyzing and appraising telecommunications properties in the U.S. and all parts of the world. We provide a wide range of services from market surveys, preliminary valuations and cash flow analyses to complete business plans and assistance for cable television, wireless, cellular and paging systems. Our work is performed by full-time professional telecommunications consultants and appraisers who have years of experience and expertise. We have in-house capabilities in engineering, research, finance, marketing, and programming that are utilized to provide a thorough and comprehensive approach to our projects.

Personal qualifications of Robert M. Jones

I have been associated with MTA for the past twenty-five years, assuming the position of Executive Vice President in 1985 and the President position in 1988. Besides my participation in the strategic and administrative activities of MTA, my consulting services focus on the financial, operating, management and regulatory aspects of the cable television and wireless industries. Additional knowledge and expertise have been obtained in technical, programming and marketing areas of the cable television and wireless industries which were utilized in concert with my primary areas of expertise. Much of my work involves financial appraisals, due diligence reviews, regulatory analysis, business planning, litigation support, strategic planning and industry assessments.

I am recognized as an expert in the cable television and wireless industries and have participated in a number of seminar panels, presented speeches and provided information for trade press magazines. In addition, I have provided litigation support in numerous cases, in which over twenty of them included expert testimony. I have been recognized in

state and federal courts as an expert witness in U.S. and worldwide telecommunications matters, particularly cable television.

Compensation of Robert M. Jones and MTA

MTA was retained to conduct work for Counsel on behalf of UIH concerning the litigation between UIH and Wharf. MTA's services are being billed on an hourly basis, at the rate of $200/hour for Robert M. Jones, $175/hour for Andrew R. Gefen and $135/hour for Susan Donovan. Through May 31, 1995, MTA had billed professional fees of $13,000, plus $1,407 in reimbursable expenses. Additional professional fees of about $5,000 are expected to be billed on June 30, 1995.

III. Documents used in study

Description

I was provided with various documents and materials by Counsel, including the following:

- Complaint filed November 19, 1994, United International Holdings, Inc., et al vs The Wharf (Holdings) Limited, et al
- Amended Complaint filed March 1995.
- Excerpts from a proposal prepared by Wharf for the Hong Kong Government in May 1991 for a subscription television system in Hong Kong.
- Excerpts from a proposal prepared by Wharf for the Hong Kong Government in September 1992 for a subscription television system in Hong Kong.
- Memorandum dated October 12, 1992, from R. W. Pittman to Stephen Ng and Emil Fung.
- Financing memorandum prepared by Wharf dated August 20, 1993.

- Agreement for the Supply of Equipment, dated March 27, 1993, between Wharf Communications Investment Limited and GI Corporation.
- Miscellaneous press clippings and speeches concerning the development of the cable TV system in Hong Kong.
- Miscellaneous demographic and market information for Hong Kong.
- Proposed cost reductions (undated) in programming for Wharf Cable provided by UIH.

I have also drawn upon my experience in researching, analyzing and valuing existing and proposed cable television systems in the U.S., United Kingdom, Hong Kong, Singapore, Australia, United Arab Emirates, Argentina and other parts of the world.

As a result of my analysis, I have generated this report of damages, including a description of my methodologies, valuations of Wharf's cable television system in Hong Kong under various scenarios and valuations.

IV. Methodology

General damage calculation approaches

I determined financial damages incurred by UIH by the following approaches:

- The financial model in the Financing Memorandum, dated August 20, 1993, was used as the basic model for determining the value of the cable television system in Hong Kong as of April 1994 and corresponding damage due to the breach of contract. The financial model in the Franchise Application, dated September, 1992, was used as the basic model for determining the value of the cable television system in Hong Kong as of October 1992 and corresponding damage due to fraud. Three variations of

the discounted cash flow valuation methodology were applied to the models in order to calculate the values of the system. To address the claims for breach of contract and fraud, UIH's expected ownership interest of 10% was applied to the overall values of the system to calculate UIH's share and its corresponding damage.

- Certain assumptions were varied in the basic model in order to generate scenarios that reflected the alternative system values.

- Specific cost savings for set-top boxes were determined by comparing the difference between the price achieved by UIH and the price that had been projected by Wharf, along with the difference in cash flow between the rental and sale of decoders.

Valuation Methodology

A business valuation typically is performed using one or more of three approaches: the cost approach, the market approach, and the income approach. Since the Hong Kong system would, on the relative valuation date, be relying to a large degree on projected cash flows to develop value in its intangible assets, primarily its license, the cost approach is not appropriate in this case. The market, or comparable sales, approach has not been used because of the absence of an adequate number of relevant cable television transactions and the absence of any system that would be comparable to the system in Hong Kong. Therefore, this valuation has been based on the income approach to valuation.

There are various established methods of determining a business entity's total market value using the income approach. The most commonly accepted methods are as follows:

1. Capitalization of projected net cash flow.
2. Capitalization of single-year operating profit.
3. Dividend capitalization.
4. Market price-to-book equity.

5. Price-earnings multiple.

Of the methods listed above, MTA normally relies primarily upon the capitalization of projected net cash flow, or "discounted cash flow" approach, to calculate total value. MTA generally favors discounted cash flow methodology because it considers the broadest range of factors that will affect both the present and future income, and therefore value, of a property.

I have prepared discounted cash flow valuations for the system as of October 1992 and March 1994, along with several additional scenarios, which analyze the projected return on investment and return on equity.

Discounted Cash Flow Methodology

I have utilized the financial models in the Financing Memorandum, dated August 20, 1993, and Franchise Application, dated September 1992, and have generated three discounted cash flow models to arrive at a total system value. The return-on-equity model utilizes an after-tax discount rate which is applied to the net cash flow, including the projected residual value, after recognizing debt service and taxes. The return-on-investment model utilizes a pre-tax discount rate, which is applied to the projected operating cash flows, less capital expenditures, plus the residual value of the system.

Description of the Model

Both the return-on-equity and return-on-investment methods are dependent upon projections of the system's future net cash flow and residual value and on selection of an appropriate discount rate. My calculations are based on an analysis of the detailed projections in the Financing Memorandum dated August 20, 1993, and Franchise Application, dated September 1992, and an assessment of a variety of factors which will affect future cash flow including housing growth, plant mileage, basic and pay subscriber growth, subscriber rates, operating expenditures, and capital expenditures. Assumptions

and Explanatory Comments, provide details of the projections for plant mileage, housing, subscriber growth, subscriber, revenues and operating expenses for all years throughout the projection period, capital expenditures anticipated for the system, and miscellaneous assumptions. A Statistical Overview presents the 10-year projections for certain key factors. The Income Statement presents the projected revenues, expenses, operating income, depreciation, taxes and net income after tax. The Statement of Cash Flow summarizes the sources of cash, such as net income, depreciation and decoder deposits, along with the applications of funds of cash, such as capital expenditures and system acquisitions, resulting in the annual net change in cash position of the system. A summary of the Capital Expenditures is driven by the assumptions presented in the Assumptions and Explanatory Comments. A Financing Summary presents the timing of the draw down and repayment of the working capital and project loans, and the timing of the equity contributions.

Net Cash Flow/Return on Equity

To calculate future cash flows, I have utilized the Financing Memorandum's and Franchise Application's projected future subscribers, revenues, operating expenses, capital expenditures, debt service and taxes to compute the projected cash flow that would be available to the equity holders. The applicable cash flow stream is identified in the Financing Memorandum and Franchise Application as the "Change in Cash" in the Sources and Uses of Funds Statement, as shown in the valuation calculations in this report. The projected cash flows for the system, plus the last-year residual value of the system, are then discounted to their present value using a reasonable expected after-tax equity return.

Using the return-on-equity model, I have generated a range of values for the system. The differences in the range are based on differences in the discount rates due to variations in the equity premium risk factor which gives effect to the expected

level of investment risk associated with a start-up cable television system in Hong Kong, as shown in the valuation calculations in this report.

Net Cash Flow/Return On Investment

This discounted cash flow method, similar to the preceding method, is used to measure the net present value of the pre-tax operating cash flow, less capital expenditures, plus the residual value of the system, that represent the return on the total investment rather than a return on equity. To calculate future cash flows, I have used the same projections for future subscribers, revenues, operating expenses, and capital expenditures as in the return-on-equity method. The projected cash flows for the system, plus the last-year residual value of the system, less capital expenditures, are then discounted to their present value using an acceptable discount factor based on the weighted average cost of money or pre-tax equity return, as appropriate.

Two similar, but slightly different, approaches, utilizing pre-tax cash flows from the Financing Memorandum and Franchise Application, have been used in the return-on-investment valuations. In the first method, the cash flow labeled "Funding Surplus (Requirement)" in the Cash Flow Statement recognizes the annual availability of or requirement for funds after recognizing the revenues, expenses and capital expenditures. This cash flow stream is discounted back to the present, along with the Year 10 residual value, at a weighted average discount rate. The second method is a straight-forward method that calculates the residual value of the system in Year 10 and applies the rate to the value to calculate the net present value of the system.

I have used the return on investment model, like the return on equity model, to generate a range of values for the system. The differences in the range are based on differences in the discount rate due to variations in the equity premium risk factor which

gives effect to the expected level of investment risk associated with a start-up cable television system in Hong Kong.

Cash Flow Projections

I have utilized the available data to analyze the franchise area, the costs incurred to meet franchise obligations, the length of the franchise period, the degree of competition, and the projected results of the system's operations. I also have examined factors that affect the industry, such as possibility of regulation, competitive threats, rapid technical changes, and the development of additional programming services. These factors have been incorporated into my projections of the system's future cash flows.

Residual Value

Under both the return-on-equity and the return-on-investment approaches, I have calculated a residual value for the system at the end of the ten-year projection period. The residual represents the anticipated market value of the system at the end of the projection period. This value is added to the system's cash flow stream in the final year of the projection period and then discounted back to present value.

The residual is calculated as a multiple of the projected annual cash flow in the final year of the discounted cash flow analysis. The multiple used reflects the degree of likelihood that the system will have significant future income, and therefore value, at the end of the projection period. If the franchise is likely to be renewed on the same terms as the current franchises, and if there is a realistic expectation of continued growth in income, a higher multiple will be applied. On the other hand, if the franchise is not likely to be renewed, or is renewed on terms and conditions significantly different from the current franchise, or if competitive or technological factors jeopardize the operator's future income, a lower multiple is appropriate.

Based on my experience and familiarity with the cable industry, and my analysis of the system, I have calculated the system's

residual value using tenth-year cash flow times a multiple of ten. This multiple reflects my view that the system is likely to have significant value in ten years, but that certain unknowns and uncertainties must be factored into the multiple nonetheless. There is no guarantee of renewal, and it is expected that the negotiation process required to obtain a renewal could result in a new franchise that will be on terms different and possibly less favorable than the current franchise. In addition, meaningful competition is expected to be present in the market in Year 10 which will affect the system's future activities.

Discount Rate

The discount rate represents the investor's expected return on capital, i.e., the rate of return that reasonably reflects the risk of being undertaken by the investor. Considering the relative risk associated with the cable industry in comparison to other industries, and the risk associated with the system in particular, I have adopted a range of discount rates for the discounted cash flow methods. For the October 1992 after-tax return-on-equity model, I have applied discount rates of 12.99%, 14.03% and 15.06%, while in the pre-tax return-on-investment models, the discounts are 12.65%, 13.40% and 14.15%, based on 40% debt and 60% equity and a tax rate of 17.50%. For the March 1994 after-tax return-on-equity model, I have applied discount rates of 12.99%, 14.03% and 15.06%, while in the pre-tax return-on-investment models, the discounts are 11.88%, 12.50% and 13.13%, based on 50% debt and 50% equity and a tax rate of 17.50%. The discount rates used in the two discounted cash flow methods are indicated on Exhibits A-1, B-1 and C-1.

I have calculated the discount rate for the return-on-equity model by first identifying a risk-free rate of return (the current rate of return available on government securities as of the valuation date) and then adding the historical premium for risk that the market has actually provided the holders of representative publicly-traded cable television stocks. This

assumes that using such historical data will provide a reasonable guide to future return expectations after recognition for risk.

The discount rate incorporates systematic risk, which is the sensitivity of the return on the subject investment to changes in the return for the market as a whole. I have also incorporated into the discount rate unsystematic risk, which is any risk premium directly associated with the industry, particular company, or the subject system. Thus, internal risk factors, such as the possibility of competition, municipal and customer relations, rate structure, franchise stability, etc., have been factored into the discount rate.

The discount rate used in the return-on-investment model is determined by the "band of investment" method. The rate is based on an average of the rate applicable to equity and the cost of debt, i.e. interest rate, weighted in the proportions that are utilized for the particular system.

Application of Methodology for Valuation of Breach of Contract

The first method shown on Exhibit A is based on the net present value (NPV) of the cable system's projected "Funding Surplus/(Requirement)" and the NPV of the Year 10 "Residual Value." The Funding Surplus/(Requirement) is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow) and the Residual Value is taken from the EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement). The discount rates are presented in Exhibit A-1 and are based on a computed equity rate, tax rate, debt interest rate, debt/equity ratio and weighted average return. The stream of Funding Surplus/(Requirement) is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

The second method shown on Exhibit A is based on the NPV of the "Change in Cash" the NPV of the Year 10 "Residual Value." The Change in Cash is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow), the Residual Value is taken from EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement) and the Equity Contribution is taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow). The discount rates are presented in Exhibit A-1. The stream of Changes in Cash is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

The third method shown on Exhibit A is similar to the second method and is based on the NPV of the Year 10 "Residual Value," plus the NPV of the Year 10 "Ending Cash," less the NPV of the "Equity Contribution." The Residual Value is taken from the EBITDA on page 13 (Financial Projection 3, Financing Memorandum-August 20, 1993, Income Statement) and the Ending Cash and Equity Contribution are taken from page 12 of this report (Financial Projection 3, Financing Memorandum-August 20, 1993, Statement of Cash Flow). The discount rates are presented in Exhibit A-1. The Residual Value (Year 10 EBITDA x 10) is discounted to its NPV and added to the NPV of the Year 10 Ending Cash. The total value in HK$$ is converted to US$$ at 7.74 and UIH's share is computed at 10%. The same methodology is applied to three different discount rates.

Value Conclusions for Breach of Contract

The valuations as of March 18, 1994, yielded by each of the methods described above are shown in Exhibit A on the following page. In arriving at the final system valuation, I have

averaged the values of the three discounted cash flow methods, i.e., the return-on-equity and both return-on-investment methods. Based upon the foregoing analysis and a consideration of the various methods, I conclude that the loss of value to UIH as of March 18, 1994 was US$67,000,000.

Exhibit A

Damage Assessment
MTA-EMCI
Breach of Contract-Lost Profits

Estimated System Values (in millions)	Gross Val. HK $$	Gross Val. US $$	UIH Val. U.S. $$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)			
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,508	$712	$71
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,058	$653	$65
Discount Rage, pre-tax wtd. avg. @ 13.1%	$4,634	$599	$60
Average			$65
(Based on "Change in Cash" and with residual value @ 10X)			
Discount Rate, after-tax equity return @ 13.0%	$5,378	$695	$69
Discount Rate, after-tax equity return @ 14.0%	$4,768	$616	$62
Discount Rate, after-tax equity return @ 15.1%	$4,217	$545	$54
Average			$62
(Based on Year 10 residual value @ 10X, plus Ending Cash in Year 10)			
Discount Rate, pre-tax wtd. avg. @ 11.9%	$6,117	$790	$79
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,704	$737	$74
Discount Rate, pre-tax wtd. avg. @ 13.1%	$5,316	$687	$69
Average			$74

Exhibit A-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
Pre-tax equity return	8.75%	10.00%	11.25%
	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment -			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	50.00%	50.00%	50.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	50.00%	50.00%	50.00%
Weighted Average Return	11.88%	12.50%	13.13%

Exhibit A-2

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1993-2002 TOTAL
Statement of Cash Flow											
Net Income After Tax	HK($21)	HK($346)	HK($421)	HK($207)	HK$262	HK$841	HK$1,006	HK$1,359	HK$1,480	HK$1,584	HK$5,346
Less: Expenses Capitalized	(461)	(844)	(436)	(328)	(355)	(384)	(414)	(438)	(485)	(493)	(4,620)
Add: Income Taxes	0	0	0	0	0	0	0	0	208	343	549
Add: Depreciation & Amortization	0	117	399	580	634	645	677	703	708	719	5,185
Add: Net Decoder Deposit Received	7	96	98	88	64	53	47	49	13	14	547
(Increase) Decrease in Other Working Capital	44	(15)	(58)	(56)	(56)	(41)	(37)	(34)	(28)	(23)	(304)
Net Source of Funds from Operations	(431)	(992)	(418)	74	569	917	1,279	1,643	1,914	2,144	6,703
Application of Funds											
Capital Expenditures	1,277	868	328	265	208	215	206	220	184	175	4,007
FSS Acquisition	(428)	0	0	0	0	0	0	0	0	0	(428)
Funding Surplus (Requirement)	(2,137)	(1,860)	(747)	(191)	301	702	1,073	1,426	1,750	1,969	2,267
Cumulative Funding Requirement	(2,137)	(4,017)	(4,785)	(4,955)	(4,854)	(3,952)	(2,880)	(1,452)	299	2,267	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	1,237	1,179	348	193	0	0	0	0	0	0	2,957
Project Loan	0	1,600	400	0	(100)	(250)	(500)	(575)	(575)	0	0
Working Capital Loan	900	(900)	0	0	0	0	0	0	0	0	0
Total	HK$2,137	HK$1,879	HK$748	HK$193	HK($100)	HK($250)	HK($500)	HK($575)	HK($575)	HK$0	HK$2,957
Change in Cash	HK($0)	HK($1)	HK$1	HK$2	HK$201	HK$452	HK$573	HK$853	HK$1,175	HK$1,968	
Beginning Cash	HK$0	HK($0)	HK($1)	HK($1)	HK$2	HK$203	HK$855	HK$1,227	HK$2,080	HK$3,268	
Ending Cash - Annual	HK($0)	HK($1)	HK($1)	HK$2	HK$203	HK$655	HK$1,227	HK$2,080	HK$3,258	HK$5,224	
Ending Cash - Year 10	0	0	0	0	0	0	0	0	0	HK$5,224	

Exhibit A-3

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Income Statement											
Revenue:											
Gross Basic Revenue	HK$5	HK$325	HK$918	HK$1,532	HK$2,103	HK$2,580	HK$3,011	HK$3,403	HK$3,747	HK$4,031	HK$21,655
Less: Promotional Incentives	(2)	(54)	0	0	0	0	0	0	0	0	(56)
Net Basic Revenue	3	271	918	1,532	2,103	2,580	3,011	3,403	3,747	4,031	21,599
Star TV Premium Channels or Alternate	0	17	77	180	239	202	345	395	434	464	2,424
Less: Promotional Incentives	0	(11)	0	0	0	0	0	0	0	0	(11)
Net Star TV Premium Channels or Alternate	0	6	77	180	239	292	348	395	434	464	2,413
Other Premium Revenue	0	0	16	55	86	105	123	139	183	186	842
Other Distribution Revenue	9	28	35	38	41	45	48	51	54	57	407
Total Operating Revenue	HK$12	HK$388	HK$1,048	HK$1,706	HK$2,469	HK$3,022	HK$3,528	HK$3,988	HK$4,358	HK$4,717	HK$25,261
Installation/Connection Revenue	0	2	20	30	87	68	99	111	106	115	662
Total Revenue	HK$12	HK$308	HK$1,066	HK$1,815	HK$2,556	HK$3,111	HK$3,627	HK$4,099	HK$4,496	HK$4,833	HK$25,923
Less: Government Fees and Royalties	(1)	(20)	(83)	(143)	(202)	(247)	(289)	(329)	(382)	(389)	(2,066)
Net Revenue	HK$11	HK$288	HK$903	HK$1,872	HK$2,354	HK$2,564	HK$3,330	HK$3,770	HK$4,134	HK$4,444	HK$23,856

HK $ million	First Ten Years										1993-2002 TOTAL
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	
Operating Expenses:											
TV Operations	HK$235	HK$603	HK$845	HK$712	HK$771	HK$833	HK$900	HK$956	HK$1,012	HK$1,073	HK$7,739
Cable Operations	185	591	588	845	747	840	910	971	1,037	1,106	7,800
Corporate	40	51	62	65	70	75	81	86	92	97	719
Other Distribution	25	38	39	43	46	50	54	57	61	64	477
Bad Debt	0	3	10	18	25	30	35	40	44	47	253
Total Operating Expenses	HK$485	HK$1,256	HK$1,324	HK$1,483	HK$1,659	HK$1,828	HK$1,980	HK$2,109	HK$2,246	HK$2,387	HK$16,788
EBITDA	HK($474)	HK($966)	HK($341)	HK($169)	HK($805)	HK($1,038)	HK($1,358)	HK($1,688)	HK($1,686)	HK($2,057)	HK($7,070)
Operating Margin (As of % of Total Operating Rev	N/A	N/A	N/A	11%	28%	34%	36%	42%	43%	44%	
Operating Margin (As of % of Net Revenue)	N/A	N/A	N/A	11%	30%	38%	41%	44%	46%	48%	
Residual Value in Year 10	0	0	0	0	0	0	0	0	0	20,568	
Add(Less):											
Interest Income / (Expense)	HK($8)	HK$(75)	HK($117)	HK($145)	HK($154)	HK($131)	HK($89)	HK($28)	HK$41	HK$96	HK($610)
Capitalized Expenses	461	844	436	329	355	384	414	439	485	493	4,620
Depreciation & Amortization	0	(117)	(398)	(580)	(834)	(646)	(877)	(703)	(706)	(719)	(5,185)
Net Income Before Tax	HK($21)	HK$(346)	HK($421)	HK($207)	HK$282	HK$641	HK$1,006	HK$1,389	HK$1,668	HK$1,927	HK$5,895
Income Tax	0	0	0	0	0	0	0	0	(206)	(343)	(549)
Net Income After Tax	HK($21)	HK$(346)	HK($421)	HK($207)	HK$282	HK$641	HK$1,006	HK$1,389	HK$1,480	HK$1,584	HK$5,346

Application of Methodology for Valuation of Fraud

The first method shown on Exhibit B is based on the net present value (NPV) of the cable system's projected "Funding Surplus/(Requirement)" and the NPV of the Year 10 "Residual Value." The Funding Surplus/(Requirement) is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow and the Residual Value is taken from the EBITDA on page 20 (Financial Projection 2, Franchise Application-September 30, 1992, Income Statement). The discount rates are presented in Exhibit B-1 and are based on a computed equity rate, tax rate, debt interest rate, debt/equity ratio and weighted average return. The stream of Funding Surplus/(Requirement) is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

The second method shown on Exhibit B is based on the NPV of the "Change in Cash" the NPV of the Year 10 "Residual Value." The Change in Cash is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow), the Residual Value is taken from the EBITDA on page 20 (Financial Protection 2, Franchise Application-September 30, 1992, Income Statement) and the Equity Contribution is taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow). The discount rates are presented in Exhibit B-1. The stream of Changes in Cash is discounted to its NPV and added to the NPV of the Residual Value (Year 10 EBITDA x 10). The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share

computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

The third method shown on Exhibit B is similar to the second method and is based on the NPV of the Year 10 "Residual Value," plus the NPV of the Year 10 "Ending Cash," less the NPV of the "Equity Contribution." The Residual Value is taken from the EBITDA on page 20 (Financial Projection 2, Franchise Application-September 30, 1992, Income Statement) and the Ending Cash and Equity Contribution are taken from page 19 of this report (Financial Projection 2, Franchise Application-September 30, 1992, Statement of Cash Flow). The discount rates are presented in Exhibit B-1. The Residual Value (Year 10 EBITDA x 10) is discounted to its NPV and added to the NPV of the Year 10 Ending Cash. The total value in HK$$ is converted to US$$ at 7.74 and discounted by 15% for risks associated with the pending Hong Kong franchise deliberations and the HutchVision contract, with UIH's share computed at 10% of the resulting amount. The same methodology is applied to three different discount rates.

Value Conclusions for Fraud

The valuations as of October 1992 yielded by each of the methods described above are shown in Exhibit B on the following page. In arriving at a final system valuation, I have averaged the values of the three discounted cash flow methods, *i.e.*, the return-on-equity and both return-on-investment methods and included an additional risk discount of 15% to account for the absence of a subscription license with the Hong Kong government and a contract with HutchVision for certain programming. Based upon the foregoing analysis and a consideration of the various methods, I conclude that the loss of value to UIH as of October 1992, was US$50,000,000.

Exhibit B

Damage Assessment
MTA-EMCI
Fraud - Lost Value

Estimated System Values w/15% Discount for Risk re Franchise and HutchVision (in millions)	Gross Val. HK $$	Gross Val. US $$	UIH Val. U.S. $$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)			
Discount Rate, pre-tax wtd. avg. @ 12.7%	$4,192	$542	$54
Discount Rate, pre-tax wtd. avg. @ 13.4%	$3,744	$484	$48
Discount Rate, pre-tax wtd. avg. @ 14.2%	$3,328	$430	$43
Average			$49
(Based on "Change in Cash" and with residual value @ 10X)			
Discount Rate, after-tax equity return @ 13.0%	$4,305	$556	$56
Discount Rate, after-tax equity return @ 14.0%	$3,781	$486	$49
Discount Rate, after-tax equity return @ 15.1%	$3,271	$423	$42
Average			$49
(Based on Year 10 residual value @ 10X, plus Ending Cash in Year 10)			
Discount Rate, pre-tax wtd. avg. @ 12.7%	$4,510	$583	$58
Discount Rate, pre-tax wtd. avg. @ 13.4%	$4,090	$528	$53
Discount Rate, pre-tax wtd. avg. @ 14.2%	$3,702	$478	$48
Average			$53

Exhibit B-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
Pre-tax equity return	8.75%	10.00%	11.25%
	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment -			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	60.00%	60.00%	60.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	40.00%	40.00%	40.00%
Weighted Average Return	12.65%	13.40%	14.15%

Exhibit B-2

Financial Projections
Franchise Application - September 30, 1992

HK $ million	First Ten Years 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1993-2002 TOTAL
Statement of Cash Flow											
Net Income After Tax	5	(255)	(565)	(730)	(381)	34	535	762	1,120	1,583	2,000
Less: Expenses Capitalized	(500)	(880)	(411)	208	210	215	209	211	211	208	(477)
Add: Income Taxes	0	0	0	0	0	0	0	206	384	496	1,091
Add: Depreciation & Amortization	0	180	250	281	300	308	307	318	317	284	2,507
Add: Net Decoder Deposit Received	18	81	108	86	82	88	54	47	43	33	501
(Increase)/Decrease in Other Working Capital	0	0	0	0	0	0	0	0	0	0	0
Net Source of Funds from Operations	(648)	(664)	(815)	(183)	182	817	1,104	1,538	2,085	2,805	5,838
Application of Funds											
Capital Expenditures	(1,443)	(824)	(810)	(224)	(234)	(238)	(244)	(228)	(204)	(162)	(4,714)
Funding Surplus/(Requirement)	(2,000)	(1,701)	(1,425)	(407)	(41)	378	880	1,308	1,877)	2,442	1,126
Cumulative Funding Requirement	(2,000)	(3,000)	(5,283)	(5,700)	(5,742)	(5,363)	(4,503)	(3,194)	(1,310)	1,125	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	2,087	775	1,350	300	0	0	0	0	0	0	4,512
Project Loan	0	1,000	400	0	(100)	(250)	(500)	(575)	(676)	0	0
Working Capital Loan	0	0	0	0	0	0	0	0	0	0	0
Total	2,087	2,376	1,780	300	(100)	(250)	(500)	(575)	(676)	0	4,512
Change in Cash											
Beginning Cash	(1)	584	325	(107)	(141)	120	360	734	1,302	2,442	
Ending Cash - Annual	0	(1)	594	818	812	870	788	1,158	1,883	3,194	
Ending Cash - Year 10	(1)	584	818	812	470	700	1,158	1,883	3,184	6,837	
	0	0	0	0	0	0	0	0	0	5,837	

Exhibit B-3

Financial Projections
Franchise Application - September 30, 1992
Wharf Cable Financial Case

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Income Statement											
Revenue:											
Gross Basic Revenue	5	259	669	1,464	1,962	2,491	3,048	3,556	4,058	4,651	22,289
Less: Promotional Incentives	0	(3)	(2)	(5)	(8)	(11)	(14)	(17)	(21)	(24)	(104)
Net Basic Revenue	5	255	867	1,459	1,954	2,480	3,033	3,638	4,037	4,627	22,185
Star TV Premium Channels or Alternate											
Less: Promotional Incentives											0
Net Star TV Premium Channels or Alternate	0	0	0	0	0	0	0	0	0	0	0
Other Premium Revenue	0	20	107	247	394	534	684	833	963	1,140	4,953
Other Distribution Revenue	0	0	0	0	0	0	0	0	0	0	0
Less: Royalty Fees	(0)	(16)	(73)	(127)	(172)	(210)	(267)	(313)	(359)	(402)	(1,846)
Total Operating Revenue	5	292	901	1,579	2,177	2,706	3,450	4,056	4,671	5,265	25,192
Installation/Connection Revenue	0	40	77	72	78	84	90	91	95	93	720
Total Revenue	5	332	977	1,652	2,255	2,890	3,540	4,147	4,766	5,358	25,912
Less: Government Fees and Royalties	(0)	(16)	(73)	(127)	(172)	(218)	(268)	(313)	(350)	(402)	(1,946)
Net Revenue	5	316	904	1,525	2,083	2,682	3,272	3,634	4,406	4,957	23,966

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Operating Expenses:											
TV Operations											0
Cable Operations											0
Corporate											0
Other Distribution											0
Bad Debt											0
Total Operating Expenses	800	1,213	1,542	1,576	1,653	2,021	2,190	2,380	2,518	2,649	18,713
EBITDA	(???)	(???)	(???)	(154)	230	641	1,082	1,444	1,693	2,306	5,253
Operating Margin (As a % of Total Operating Revenue)	-13???%	-???%	-71%	-10%	11%	23%	31%	38%	41%	44%	
Operating Margin (As a % of Net Revenue)	-13???%	-264%	-79%	-10%	11%	24%	33%	38%	43%	47%	
Residual Value in Year 10	0	0	0	0	0	0	0	0	0	23,078	
Add/(Less):											
Interest Income/(Expense)	0	(40)	(65)	(96)	(100)	(83)	(31)	45	148	264	24
Capitalized Expenses	???	???	411	(208)	(210)	(215)	(209)	(211)	(211)	(208)	477
Depreciation & Amortization	0	(???)	(256)	(261)	(300)	(308)	(307)	(318)	(317)	(284)	(2,587)
Net Income Before Tax	5	(255)	(???)	(738)	(381)	36	536	860	1,514	2,078	3,187
Income Tax	0	0	0	0	0	0	0	(208)	(394)	(496)	(1,097)
Net Income After Tax	5	(255)	(565)	(738)	(361)	34	535	762	1,120	1,583	2,090

Value Comparisons for UIH Contributions

Elimination of "Hot Drops"

To recognize the potential effect of the lost revenues from "hot drops," I used the basic model from the August 1993 Financing Memorandum and reduced the applicable revenues by about 1.8% each year, based conservatively on an unauthorized use penetration of 5% in the public housing units which represent about 36% of the total housing units, i.e. 5% X 36% = 1.8%. The application fo the methodology for the valuation of the system, assuming reduced revenues due to "hot drops," is the same as the methodology for Breach of Contract and Fraud described previously. The resulting value of the system in Exhibit C was compared to the value computed for Breach of Contract (Exhibit A) and the difference was determined. The difference in value in HK$$ is converted to US$$ at 7.74.

The changes in cash flow resulted in changing the system's value by US$55,500,000. The summary schedules are shown on the following pages.

Exhibit C

Damage Assessment
MTA-EMCI
Elimination of "Hot Drops"

Estimated System Values (in millions)	Gross Val. HK$$	Gross Val. US$$	UIH Val. Base U.S.$$	Diff. from base U.S.$$
(Based on "Funding Surplus/(Requirement)" and with residual value @ 10X)				
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,020	$649	$712	$63
Discount Rate, pre-tax wtd. avg. @ 12.5%	$4,592	$593	$653	$60
Discount Rate, pre-tax wtd. avg. @ 13.1%	$4,919	$541	$599	$57
Average				$60
(Based on "Change in Cash" and with residual value @ 10X)				
Discount Rate, after-tax equity return @ 13.0%	$4,930	$637	$695	$58
Discount Rate, after-tax equity return @ 14.0%	$4,354	$562	$616	$54
Discount Rate, after-tax equity return @ 15.1%	$3,833	$495	$545	$50
Average				$54
(Based on Year 10 residual value @10X, plus Ending Cash in Y)				
Discount Rate, pre-tax wtd. avg. @ 11.9%	$5,688	$735	$790	$55
Discount Rate, pre-tax wtd. avg. @ 12.5%	$5,298	$684	$737	$52
Discount Rate, pre-tax wtd. avg. @ 13.1%	$4,932	$637	$687	$50
Average				$53

Exhibit C-1

Damage Assessment
MTA-EMCI
Computation of Discount Rates

Equity Discount Rate -			
Risk-free equity return	7.00%	7.00%	7.00%
Equity risk premium	7.00%	8.00%	9.00%
Beta	1.25	1.25	1.25
	8.75%	10.00%	11.25%
Pre-tax equity return	15.75%	17.00%	18.25%
Tax rate	17.50%	17.50%	17.50%
After-tax equity return	12.99%	14.03%	15.06%
Weighted Average Return on Investment-			
Pre-tax equity return	15.75%	17.00%	18.25%
Equity portion of total investment	50.00%	50.00%	50.00%
Debt interest rate	8.00%	8.00%	8.00%
Debt portion of total investment	50.00%	50.00%	50.00%
Weighted Average Return	11.88%	12.50%	13.13%

Exhibit

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years										1993-2002
Income Statement	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Revenue:											
Gross Basic Revenue	HK$5	HK$325	HK$918	HK$1,532	HK$2,103	HK$2,580	HK$3,011	HK$3,403	HK$3,747	HK$4,031	HK$21,655
Less: Promotional Incentives	(2)	(54)	0	0	0	0	0	0	0	0	(56)
Net Basic Revenue	3	271	918	1,532	2,103	2,580	3,011	3,403	3,747	4,031	21,599
Star TV Premium Channels or Alternate	0	17	77	180	239	202	346	395	434	464	2,424
Less: Promotional Incentives	0	(11)	0	0	0	0	0	0	0	0	(11)
Net Star TV Premium Channels or Alternate	0	6	77	180	239	292	346	395	434	464	2,413
Other Premium Revenue	0	0	16	55	86	105	123	139	183	186	842
Less: Loss of "Holdrop" revenue at 5% of Public Housing Units (38.4%)	(0)	(8)	(19)	(32)	(45)	(55)	(64)	(73)	(80)	(66)	(460)
Other Distribution Revenue	9	29	35	38	41	45	48	51	54	57	407
Total Operating Revenue	HK$12	HK$380	HK$1,027	HK$1,753	HK$2,424	HK$2,967	HK$3,464	HK$3,915	HK$4,308	HK$4,631	HK$24,801
Installation/Connection Revenue	0	2	20	30	87	69	99	111	108	116	662
Total Revenue	HK$12	HK$382	HK$1,047	HK$1,783	HK$2,511	HK$3,056	HK$3,563	HK$4,026	HK$4,416	HK$4,747	HK$25,463
Less: Government Fees and Royalties	(1)	(20)	(83)	(143)	(202)	(247)	(289)	(329)	(382)	(389)	(2,065)
Net Revenue	HK$11	HK$282	HK$964	HK$1,640	HK$2,309	HK$2808	HK$3,274	HK$3,597	HK$4,054	HK$4,358	HK$23,398

Exhibit

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections (continued)

HK $ million	First Ten Years 1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	1993-2002 TOTAL
Operating Expenses:											
TV Operations	HK$235	HK$603	HK$645	HK$712	HK$771	HK$833	HK$900	HK$956	HK$1,012	HK$1,073	HK$7,739
Cable Operations	185	591	588	645	747	840	910	971	1,037	1,106	7,800
Corporate	40	51	62	65	70	75	81	86	92	97	719
Other Distribution	25	38	39	43	46	50	54	57	61	64	477
Bad Debt	0	3	10	18	25	30	35	40	44	47	253
Total Operating Expenses	HK$485	HK$1,286	HK$1,324	HK$1,483	HK$1,659	HK$1,828	HK$1,980	HK$2,109	HK$2,246	HK$2,387	HK$16,788
EBITDA	HK($474)	HK($1,004)	HK($360)	HK($157)	HK($850)	HK($981)	HK($1,294)	HK($1,589)	HK($1,606)	HK($1,971)	HK($8,611)
Operating Margin (As of % of Total Operating Rev	N/A	N/A	N/A	9%	27%	33%	37%	41%	42%	43%	
Operating Margin (As of % of Net Revenue)	N/A	N/A	N/A	10%	28%	35%	40%	43%	45%	45%	
Residual Value in Year 10	0	0	0	0	0	0	0	0	0	19,710	
Add(Less):											
Interest Income / (Expense)	HK($8)	HK$(75)	HK($117)	HK($145)	HK($154)	HK($131)	HK($89)	HK($28)	HK$41	HK$96	HK($610)
Capitalized Expenses	461	844	436	329	355	384	414	439	465	493	4,620
Depreciation & Amortization	0	(117)	(399)	(580)	(834)	(649)	(877)	(703)	(706)	(719)	(5,185)
Net Income Before Tax	HK($21)	HK$(352)	HK($440)	HK($239)	HK$217	HK$586	HK$942	HK$1,297	HK$1,606	HK$1,641	HK$5,436
Income Tax	0	0	0	0	0	0	0	0	(206)	(343)	(549)
Net Income After Tax	HK($21)	HK$(352)	HK($440)	HK($239)	HK$217	HK$586	HK$942	HK$1,297	HK$1,400	HK$1,498	HK$4,887

Exhibit C-2

Financial Projections
Financing Memorandum - August 20, 1993
CNCL Consolidated Financial Projections

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Statement of Cash Flow											
Net Income After Tax	HK($21)	HK($352)	HK($440)	HK($239)	HK$217	HK$586	HK$942	HK$1,297	HK$1,400	HK$1,495	HK$4,867
Less: Expenses Capitalized	(461)	(844)	(436)	(329)	(355)	(384)	(414)	(439)	(485)	(493)	(4,620)
Add: Income Taxes	0	0	0	0	0	0	0	0	206	343	549
Add: Depreciation & Amortization	0	117	398	580	634	648	677	703	708	719	5,185
Add: Net Decoder Deposit Received	7	96	96	86	64	53	47	49	13	14	547
(Increase)/Decrease in Other Working Capital	44	(15)	(58)	(56)	(56)	(41)	(37)	(34)	(28)	(23)	(304)
Net Source of Funds from Operations	(431)	(898)	(437)	42	524	862	1,215	1,578	1,834	2,058	6,244
Application of Funds	0	0	0	0	0	0	0	0	0	20,670	
Capital Expenditures	(1,277)	(898)	(329)	(286)	(268)	(215)	(206)	(220)	(164)	(175)	(4,007)
FSS Acquisition	(429)	0	0	0	0	0	0	0	0	0	(428)
Funding Surplus/(Requirement)	(2,137)	(1,688)	(758)	(223)	256	647	1,009	1,368	1,670	1,883	1,808
Cumulative Funding Requirement	(2,137)	(4,023)	(4,789)	(5,013)	(4,758)	(4,110)	(3,101)	(1,746)	(75)	1,808	

HK $ million	First Ten Years										1993-2002
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	TOTAL
Sources of Financing											
Equity Contribution	1,237	1,179	348	193	0	0	0	0	0	0	2,957
Project Loan	0	1,600	400	0	(100)	(250)	(500)	(575)	(575)	0	0
Working Capital Loan	900	(900)	0	0	0	0	0	0	0	0	0
Total	HK$2,137	HK$1,879	HK$748	HK$193	HK($100)	HK($250)	HK($500)	HK($575)	HK($575)	HK$0	HK$2,957
Change in Cash	HK($0)	HK($7)	HK($18)	HK($30)	HK$156	HK$387	HK$509	HK$761	HK$1,095	HK$1,883	
Beginning Cash	HK$0	HK($0)	HK($7)	HK($25)	HK($56)	HK$101	HK$497	HK$1,006	HK$1,786	HK$2,882	
Ending Cash	HK($0)	HK($7)	HK($25)	HK($58)	HK$101	HK$497	HK$1,006	HK$1,786	HK$2,862	HK$4,785	
Ending Cash - Year 10	0	0	0	0	0	0	0	0	0	HK$4,765	

Decoder Rentals vs Sales

To determine the effect of the rental of decoders rather than a combination of rental and sale, I used the basic financial model from the Financing Memorandum and computed the difference in cash flow that would result under the following scenarios: (1) the cash flow resulting from a combination of rental and sale of decoders, using the rates proposed in the September 1992 Franchise Proposal and the adjusted penetration levels demonstrated by the SRH market research and(2) the cash flow resulting from the use of 100% rental of decoders in the August 1993 Financing Memorandum.

The changes in cash flow resulted in a difference of a minimum of US$24,000,000, as shown on the following pages.

If I had calculated the change in cash flow on the basis of a strategy of 100% sale of decoders compared to a strategy of 100% rental, the change in cash flow would have been significantly higher, after adjusting for the decrease in penetration that would occur as demonstrated by the SRH market research.

UIH vs Wharf

Decoder Rentals vs Sales

Damage Calculation	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Subscribers (000's)	28	280	448	818	734	862	868	912	926	940
Average Subscribers (000's)	12	137	348	632	678	768	838	865	919	933
Cost of Decoder	1,300	1,300	1,300	1,300	1,300	1,360	1,300	1,300	1,300	1,300
Price of Decoder to Customer	1,000	1,000	1,260	1,434	1,505	1,581	1,660	1,743	1,830	1,821
Monthly Subscriber Fee if buy	170									
Monthly Subscriber Fee if rent	200									
Decoder Deposit	500	550	605	000	732	781	854	922	878	1038
Decoder rental	30									
Assume $0% rent and $0% buy -										
Revenues from rental subscribers:										
Monthly rate at $170, plus inflation	$170	$170	$187	$206	$226	$244	$264	$285	$303	$320
Monthly cash flow @ sel. 40% (000's)	$4,395	$55,986	$156,182	$262,638	$367,100	$450,426	$526,731	$805,414	$664,394	$717,138
Monthly rent at $30 (000's), incl. inflation	$2,180	$24,660	$68,904	$115,070	$161,056	$198,717	$231,840	$367,095	$280,987	$316,385
Total annual cash flow (000's)	$7,056	$60,556	$225,088	$378,607	$529,667	$649,143	$757,672	$872,500	$960,381	$1,033,623
Cost of decoder	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
Total cost of decoders	($15,900)	($148,900)	($127,400)	($111,000)	($75,400)	($44,208)	($36,400)	($35,100)	($9,108)	($59,100)
Annual Cash Flow	($8,544)	($66,344)	$87,650	$266,707	$453,667	$604,843	$721,272	$837,408	$951,281	$1,024,423
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$332,480					
NPV of CF & Rent Residual @15% in Yr 5	$550,074									
Residual of renta l@5X, less replcmnt	$0	$0	$0	$0	$0	$472,268				
NPV of CF & Rent Residual @16% in Yr 6	$850,360									
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$0	$0	$602,001			
NPV of CF & Rent Residual @16% in Yr 7	$1,143,674									
Revenues from purchase subs:										
Monthly sale of $170, plus inflation	$170	$170	$187	$206	$326	$244	$284	$265	$302	$320
Monthly cash flow @sel. 40%	$4,596	$55,095	$156,182	$282,638	$367,100	$50,426	$526,731	$605,414	$586,384	$717,138
Purchase of decoder @$1,000	$12,000	$113,000	$123,480	$123,324	$87,290	$53,754	$48,480	$47,651	$12,810	$13,447
Total annual cash flow	$16,808	$168,000	$270,682	$386,682	$454,380	$504,180	$672,211	$662,475	$679,204	$730,685
Cost of decoder	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
Total cost of decoders	($15,600)	($148,990)	($127,400)	($111,600)	($75,400)	($44,200)	($38,400)	($35,100)	($9,100)	($8,100)

UIH vs Wharf

Decoder Rentals vs Sales

Annual Cash Flow	$1,298	$21,996	$152,282	$274,182	$378,880	$459,640	$635,811	$617,375	$870,104	$721,485
NPV of Cash Flow @15% in Yr.5	$483,052									
NPV of Cash Flow @16% in Yr.6	$881,814									
NPV of Cash Flow @18% in Yr. 7	$863,345									
Total NPV for Rent/Buy Combination										
NPV of CF and Rent Residual in Yr.5	$1,013,127									
NPV of CF and Rent Residual in Yr.6	$1,512,304									
NPV of CF and Rent Residual in Yr.7	$2,007,020									
Assume 100% rent and 0% buy										
Revenues from rental subscribers										
Monthly rate at $170, plus inflation	$170	$170	$187	$200	$220	$244	$264	$286	$302	$320
Monthly cash flow @ est 40%	$9,782	$111,792	$312,385	$826,276	$734,201	$900,851	$1,051,483	$1,210,820	$1,332,787	$1,434,278
Monthly rent at 830 (000s), incl. Inflation	$4,320	$40,320	$137,606	$231,730	$323,012	$387,434	$493,881	$534,100	$567,894	$632,769
Total annual cash flow	$14,112	$181,112	$450,173	$757,015	$1,068,113	$1,298,286	$1,515,343	$1,746,010	$1,820,782	$2,067,045
Cost of decoder	$1,308	$1,300	$1,300	$1,360	$1,300	$1,300	$1,300	$1,308	$1,300	$1,300
Total cost of decoders	($31,200)	($269,600)	($254,800)	($223,000)	($150,800)	($60,400)	($72,600)	($70,200)	($19,200)	($18,200)
Annual Cash Flow	($17,066)	($932,688)	$185,375	$833,415	$807,313	$1,209,000	$1,442,643	$1,074,818	$1,602,582	$2,048,845
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$805,381					
NPV of CF & Rent Residual @ 16% in Yr.6	$1,100,140									
Residual of rental @ 5X, less replcmnt	$0	$0	$0	$0	$0	$844,672				
NPV of CF & Rent Residual @ 16% in Yr.6	$1,700,770									
Residual of rental @5X, less replcmnt	$0	$0	$0	$0	$0	$0	$1,204,003			
NPV of CF & Rent Residual @ 15% in Yr.7	$2,287,340									

Advantage of 100% Decoder Rent vs Rent/Buy Combination

(in 000's)	HK35	US$@7.74
Advantage in 5-yr period	$87,022	$11,343
Advantage in 6-yr period	$180,476	$24,351
Advantage in 7-yr period	$286,328	$38,218
Average Advantage (000's) of 180% Rent	$185,275	$23,837

Cost Savings for Set-Top Box Purchasers

The effect of the price reduction in set-top boxes was determined by comparing the net present value of the annual costs of the set-top boxes at $HK1,300 during the 10-year projection to the net present value at $HK800. The financial effect of the lower prices for set-top boxes was a minimum US$42,000,000, as shown on the following.

If I were to take into account cost savings from the elimination of the use of "smart cards," the resulting savings would be even higher, considering the cost of the smart cards and the need to periodically replace them, as well as the potential loss of revenues due to unauthorized reception and penetration decreases.

UIH vs Wharf
Damage Calculation

Set-top Box Purchases

Exhibit E

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
No. of Decoders Each year (Note A)	$5,000	201,250	199,750	150,000	141,250	86,260	73,750	77,600	20,000	21,260
Decoders (HK$ million) @ HK$1300 per unit	$5	262	250	195	184	112	96	101	26	28
Decoders (HK$)	$4,500,000	251,625,000	258,375,000	195,000,000	183,625,000	112,125,000	95,875,000	100,750,000	26,000,000	27,625,000
@$1300 per Unit Purchased	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300
NPV of Decoder costs @12.5%	$841,055,231									
Decoders (HKR) million) @HK$000 per unit	$62	$161	$159	$120	$113	$69	$59	$62	$16	$17
Decoders (HK$)	$52,000,000	$161,000,000	$159,000,000	$120,000,000	$113,000,000	$69,000,000	$59,000,000	$62,000,000	$18,000,000	$17,000,000
@$000 per Unit Purchased	$800	$800	$800	$800	$800	$800	$800	$800	$800	$800
NPV of Decoder costs @12.5%	$517,672,450									
Cost Savings on Purchase of Set-Top Boxes	$323,482,781									
Cost Savings on Set--Top Boxes in US$$	$41,783,641									

Note A - No. of Decoders taken from detailed "Assumptions" of financial model in Financing Memorandum of August 1993

Other Cost Savings and/or Value-Enhancing Contributions by UIH

There were other cost savings and/or value-enhancing contributions by UIH during the subject period that had the net effect of adding value to the system, although they are not as precisely identified and quantified as the preceding items. The additional items that contributed to the unjust enrichment are itemized in the Complaint by UIH, et al, and those not addressed above are presented below.

- Redesign microwave from 29 Ghz to 12.5 Ghz
- Eliminate use of "smart cards"
- Contributions to the franchise application
- Providing senior management
- Hiring senior management and engineering staff
- Negotiate with equipment vendors
- Contributions to the 8/93 business plan
- Interface with international bankers
- Redesign SMATV to 8 hubs
- Programming advice
- Other improvements in network design
- Cost savings and enhancements to MIS
- Ongoing knowledge and assistance

The alternative cost for the above contributions would be $US5-$US10 million when considering the professional time, administrative expenses and alternative fees and costs of outside parties. In addition, each of the above contributions led toward the system's initiation, development and improvement and subsequently in the enhanced value of the system.

Appendix
Qualifications of MTA-EMCI

Qualifications of Malarkey-Taylor Associates, Inc. (MTA)

Malarkey-Taylor Associates, Inc. ("MTA") is the world's most experienced consulting firm specializing in cable communications systems and related technologies. Since 1966 we have fulfilled the requirements of hundreds of clients in the cable television, broadcasting, microwave, cellular and paging industries; the financial and investment communities; and the public sector.

The Company was founded in 1966 by Martin F. Malarkey and Archer S. Taylor as a cable television consulting firm. Both Mr. Malarkey and Mr. Taylor had already established their reputations as pioneers and successful operators in the field of cable. Mr. Malarkey built and developed one of the first commercial community antenna television (CATV) systems in the United States in Pottsville, Pennsylvania in 1949. Mr. Taylor shared in building the first cable television system in the State of Montana in 1953. Mr. Taylor had served previously as a professional consulting engineer for the radio and television broadcast industry from 1944. The National Cable Television Association ("NCTA") was founded by Mr. Malarkey in 1951, and he was President of the Association from 1951 to 1956. Mr. Taylor was Vice-President of NCTA for one year and a member of the Board of Directors for six years. Both founders have served on many industry committees.

Our services have been utilized by decision level management in all parts of the globe. These services encompass:

- Appraisal
- Asset Valuation
- Due Diligence Review
- Engineering Planning & Analysis
- Construction Supervision

- Expert Testimony
- Franchising & Refranchising
- Investment Services
- Research & Marketing
- Regulator Analysis and Assistance
- Strategic Planning & Management

The diversity of our worldwide client roster and the fact that our clients return to us time and again attest to the long-standing reputation for objectivity and credibility our firm has achieved and consistently maintained.

MTA's long term leadership is attributed to an experienced, multi-disciplinary team of professionals who combine academic training with many years of practical experience.

The MTA staff of approximately twenty-five people is organized into five principal groups. These are:

- Financial Services
- Market Analysts and Research
- Engineering
- International
- Economic Management Consultants International, Inc. ("EMCI")

The Financial Services group performs independent fair market appraisals, purchase price allocations, due diligence reviews, financial modelling and sensitivity analyses, as well as expert testimony.

The Market Analysis and Research group does economic analyses of overbuilds, customer satisfaction surveys, market research surveys, feasibility studies, and contributes to due diligence reviews.

The Engineering group provides cost analyses, technical valuations of products and systems, analysis of future technologies, technical due diligence reviews and expert testimony.

Malarkey-Taylor International provides the focus for our world-wide consulting service in Europe, Asia, Africa, Australia, South America, and the Middle East.

EMCI provides cellular telephones and radio paging consulting, as well as publishing special and periodic industry surveys, statistical summaries and analyses.

MTA is a member of the NCTA, the California Cable Television Association (CCTA), the Pennsylvania Cable Television Association (PCTA), the Cable Television Administration and Marketing Association (CTAM), the Cable Television Association of England, the National Electrical Safety Code (NESC) and Society of Cable Television Engineers (SCTE).

MTA maintains offices in Washington, D.C. London and Paris.

Qualifications of Robert M. Jones, President, MTA

EXPERIENCE

Malarkey-Taylor Associates, Inc., Washington, DC, 1978-present, President, 1988-present; Executive Vice President, 1985-87; Vice President-Finance, 1978-84-

Responsible for the overall planning and management of all consulting activities, including hiring, training and evaluation of staff of forty. Consulting activities include domestic and international projects involving financial, technical, marketing, research and investment aspects of telecommunications, especially cable television. Personal experience includes analysis of hundreds of cable television systems, preparation of financial models, preparation and evaluation of franchise applications, preparation of feasibility studies and due diligence reports, and testimony as expert witness in cable television matters.

7th Signal Command, U.S. Army, Ft. Richie, MD, 1977-78, Chief of Internal Review (Civilian).

Responsible for audit and management assistance to approximately 150 telecommunications facilities at U.S. Army installations in the United States, Puerto Rico and Panama. Included the planning and management of an annual review program and the direction of a staff of seven auditors.

U.S. Renegotiation Board, Washington, DC, 1975-76, Supervisory Accountant-

Responsible for review and analysis of reports provided by Government contractors to determine potential excess profits and level of compliance. Included research of industry financial characteristics and onsite visits to study contractor operations.

Malarkey-Taylor Associates, Inc., Washington, DC, 1972-75, Financial Analyst-

Responsible for financial analysis involved in projections, evaluations, rate cases, appraisals, franchising and research projects. Prepared internal tax returns and financial statements.

U.S. General Accounting Office, Washington DC, 1968-69 and 1971-72 (Military absence during 1969-70), Supervisory Auditor-

Responsible for preparation, performance and reporting for various audits of Government contractors and Executive agencies.

EDUCATION

M.A. in Accounting, 1968, University of Missouri, Columbia, MO; Graduate Research and Teaching Assistant
B.B.A. in Accounting, 1966, Texas Tech University, Lubbock, TX, Dean's List, Honorary Societies

PROFESSIONAL DESIGNATIONS/MEMBERSHIPS
Certified Public Accountant, Maryland and Texas
Accredited Member, American Society of Appraisers
Member, American Institute of Certified Public Accountants

SELECTED SPEECHES AND PANEL PRESENTATIONS
"Financial Implications of Business Strategies" speech at Cable Television Conference by Frost & Sullivan Associates in September 1994.
"Effect of Rate Re-regulation on Cable TV Operators" speech/panel at Prentice Hall conference on cable television in 1993.
"Application of Cost of Service Showings for Cable TV Operators" speech at Annual Meeting of Maryland/Delaware District of Columbia Cable Association in 1993.

"Property Tax Valuation Issues" speech/panel at Cable Television Tax Professionals Institute Annual Meeting in 1992.
"Valuation Trends and Tax Issues in Cable Television" speech/panel at Atlantic City Cable Show in 1987.
"The State of the Cable Television Industry" luncheon speech at Missouri Cable Television Association Annual Meeting in 1986.
"Depreciation and Amortization Issues in Cable Television Appraisals" speech/panel at Paul Kagan Conference on Cable TV Values in 1985.
"Valuation Issues in Cable Television" speech at Women in Cable Meeting, Washington, DC Chapter in 1985.
"Steps Toward Successful Refranchising" speech at Texas Show sponsored by Texas Cable Television Association in 1982.

Miscellaneous interviews and quotes in Cablevision, Television Business, and other trade press magazines; regular articles in MTA/EMCI REVIEW published by Malarkey-Taylor/EMCI.

LITIGATION TESTIMONY

Note: Dates are approximate

Federal Trade Commission vs Digital Interactive Associates, Inc. et al
U.S. District Court, Denver, Colorado
Deposition 4/26/95; Court testimony, 4/28/95

Jean Raymer Baum vs Robert Baum
Superior Court of New Jersey
Chancery Division, Family Part, Bergen County
Deposition, 6/30/94

Northwest Indiana Telephone Company vs Internal Revenue Service
U.S. Tax Court, Washington, DC
Court testimony, 6/16/94

Rainwater vs Rainwater
Virginia State Court (Fairfax County, VA)
Court testimony, 9/23/93

John W. Davidson, et al vs Edisto Beach Cable TV, Inc., Douglas E. David, et al
Court of Common Pleas, State of South Carolina
Deposition, 5/17/93

James T. Parkinson, III et al vs First Carolina Communications, Inc., et al
Superior Court Division, North Carolina
Deposition, 3/31/93

Robert C. Wall, et al vs Gwinnett County, Georgia, et al
United States District Court of Northern District of Georgia
Deposition, 9/10/92

Pacific Federal Communications, Inc. vs County of Yolo, California
Superior Court of the State of California (Sacramento County)
Deposition, 1/30-31/92; Trial Testimony, 4/28-29/92

APPENDIX I

Pretrial Order

filed March 4, 1996

U.S. District Court for the District of Colorado

(Aplt. App. 1196-1229)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 94-D-2560

UNITED INTERNATIONAL HOLDINGS, INC., et al.,

Plaintiffs,

v.

THE WHARF (HOLDINGS) LIMITED, et al.,

Defendants.

PRETRIAL ORDER

As ordered at the November 17, 1995 Pretrial Conference, the parties respectfully submit the following Pretrial Order, which has been revised to take into account the Court's comments at the Pretrial Conference. The parties have met and conferred since the completion of the additional depositions the Court permitted defendants to complete, and are in agreement as to the matters which require agreement in this Pretrial Order. Thus, consistent with the Court's comments at the Pretrial Conference, the parties request that the Court enter this Pretrial Order without any further hearing or conference.

I. DATE OF CONFERENCE

The Pretrial Conference was held on November 17, 1995.

II. JURISDICTION

A. Plaintiffs' Statement

Pursuant to 28 U.S.C. § 1331, the Court has subject matter jurisdiction over plaintiffs' claims for violations of federal securities laws. Defendants sold an option to plaintiffs, and plaintiffs are suing for fraud in connection with that sale. Pursuant to 28 U.S.C. § 1367, the Court properly has exercised supplemental jurisdiction over plaintiffs' remaining claims.

Though defendants previously moved to dismiss for lack of subject matter jurisdiction, Tenth Circuit precedent negated the arguments defendants tried to advance, and Judge Nottingham denied that motion on April 18, 1995. Therefore, the law of the case is that this Court has subject matter jurisdiction. Defendants' pending summary judgment motion is merely a rehash of arguments the Court has already rejected.

This Court has personal jurisdiction over the defendants under Section 27 of the Securities Exchange Act and under the Colorado long-arm statute.

B. Defendants' Statement

Defendants deny that this Court has jurisdiction for the following reasons:

First, this Court lacks subject matter jurisdiction because the plaintiffs' jurisdictional allegations are based solely on their federal securities claims as to which summary judgment should be granted for defendants. As set out in Paragraph III.B, below, plaintiffs have not proved and cannot prove, two essential elements to such a claim: (1) an enforceable option contract for the "purchase or sale" of a security; and (2) fraud "in

connection with" the purchase or sale of a security. *See* Rule 10b-5, 17 C.F.R. § 240.10b-5.

Second, even if the Court determines that it has federal question jurisdiction, it should decline to exercise supplemental jurisdiction over plaintiffs' state and common law claims. Each of these claims raise complex choice of law issues and predominate substantially over the federal securities claims.

III. CLAIMS AND DEFENSES

A. Plaintiffs' Statement

This is a case for securities fraud in violation of federal and Colorado law, breach of contract and other claims brought by a Denver-based company, United International Holdings, Inc. ("UIHI") and a Colorado general partnership, UIH Asia, of which UIHI is the managing general partner (collectively, "UIH"). Named as defendants are The Wharf (Holdings) Limited ("Holdings"), its wholly-owned subsidiary, Wharf Communications Investments Limited ("WCIL"), and Stephen Ng, the current vice-chairman and former managing director of Holdings and president and a director of WCIL (collectively, "Wharf"). Also a defendant, but to the unjust enrichment claim only, is Wharf Cable Limited ("Cable"), a wholly-owned subsidiary of WCIL's wholly-owned subsidiary, CNCL.[1]

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[1] As UIH noted at the Pretrial Conference, and because those claims are no longer necessary, UIH dropped the other three claims that were pleaded against Cable in the Amended Complaint: promissory estoppel (2nd Claim), fraud (9th Claim) and civil conspiracy (12th Claim). For the same reason, UIH dropped the civil conspiracy claim against Holdings and WCIL. This leaves the eleven claims detailed at pages 5-8 below. On November 21, 1995, to confirm the withdrawal of these claims, UIH filed "Plaintiffs' Notice of Withdrawal of

All of UIH's claims arise out of Wharf's fraudulent efforts to induce UIH to provide knowledge, expertise and other services that enabled defendants to develop and implement Wharf's cable television franchise in Hong Kong, which is potentially one of the largest cable television systems in the world. In reliance on Wharf's misrepresentations of its intent to permit UIH to purchase an equity interest in the cable franchise, UIH spent thousands of man hours and approximately U.S. $1 million to provide services to defendants. Without Wharf's representations and promises, UIH never would have provided these services--much of which were provided from UIH's headquarters in Denver and elsewhere in the U.S. Among others, these promises and representations included Wharf's October 8, 1992 grant--at UIH's offices in Denver--of an option to UIHI under which UIHI or UIH Asia had the right to purchase a 10% equity interest in Wharf's cable franchise through investment in CNCL. The parties agreed to all terms of this option, intended for the grant of the option to be binding, and the option was not subject to any conditions precedent.

Notwithstanding its promises and representations to the contrary, Wharf never had the intent to permit UIH to invest or to exercise the option that Wharf granted. At the very least, Wharf acted with reckless disregard as to the truth or falsity of the representations it made to UIH. Thus, contrary to Wharf's specific representations and in breach of the parties' agreement, when UIH tried to exercise the option and invest, Wharf refused.

Based on these facts, UIH asserts the following eleven claims for relief:

Certain Claims and Joint Statement of Counsel Re the Effect of this Withdrawal."

Violations of Rule 10(b) (5) of the Securities Exchange Act and C.R.S. Section 11-51-604 (3) - (4) (Against Holdings, WCIL and Ng). The grant of the option was the sale of a security within the meaning of the Securities Exchange Act and the offer and sale of a security within the meaning of the Colorado Securities Act. Either with fraudulent intent or with reckless disregard as to the truth of the statements made, these defendants made false representations of material fact and failed to disclose material facts in connection with that offer and sale. Specifically, they misrepresented their present intent as to whether UIH would be permitted to exercise the option, and failed to disclose their hidden agenda of "conditions" they now say had to be fulfilled before investment by UIH would be allowed. UIH reasonably relied on the misrepresentations and on the non-existence of the facts not disclosed. Accordingly, UIH is entitled to recover damages equal to the difference in value of the option as misrepresented and the option's actual value, as well as out-of-pocket losses, and as permitted under Colorado law, interest at the statutory rate, costs and reasonable attorneys' fees.

Violations of Section 20(a) of the Securities Exchange Act and C.R.S. Section 11-51-604 (5) (b) (Against Holdings and WCIL). Because of the violations of the Securities Exchange Act and the Colorado Securities Act described in the previous paragraph, Holdings and WCIL are jointly and severally liable as controlling persons to pay damages to UIH.

Breach of Contract (Against Holdings and WCIL). By refusing to permit UIH to invest in CNCL, Holdings and WCIL breached their agreement whereby UIHI was granted an option under which it or UIH Asia had the right to purchase a 10% equity interest in Wharf's cable franchise through investment in CNCL. As a result, UIH suffered and seeks to recover damages, including the loss of the benefit of the bargain, as well as incidental and consequential damages.

Promissory Estoppel (Against Holdings, WCIL and Ng). This claim is in the alternative to the breach of contract claim. In June 1992 and continuing during the summer of 1992, October 1992 and thereafter, Ng promised that UIH would be permitted to invest in Wharf's cable franchise. Plaintiffs detrimentally relied on these promises by providing services to defendants, and injustice can be avoided only through the award of damages.

Unjust Enrichment/Quasi-Contract (Against Holdings, WCIL and Cable). This claim is in the alternative to the breach of contract claim. As a result of the knowledge, expertise and other services that UIH provided to defendants, defendants obtained substantial monetary benefits, and it would be unjust if the defendants were allowed to retain these benefits without paying UIH for them.

Fraud (Against Holdings, WCIL and Ng). Either with fraudulent intent or with reckless disregard as to the truth of the statements made, these defendants made false representations as to their present intent to permit UIH to invest in Wharf's cable franchise, and they failed to disclose material facts necessary to make statements made not misleading, including their hidden agenda of conditions that defendants now say had to be fulfilled before investment by UIH would be permitted. UIH reasonably relied on these defendants' misrepresentations and on the non-existence of the facts not disclosed. Accordingly, UIH is entitled to recover actual damages. Because defendants' conduct was willful and wanton, UIH also is entitled to recover punitive damages to the maximum extent permitted under Colorado law.

Negligent Misrepresentation (Against Holdings and WCIL). Acting recklessly or otherwise without exercising ordinary care, these defendants made false representations regarding their intention to permit UIH to invest in Wharf's

cable franchise. UIH reasonably relied on these misrepresentations in providing services to Wharf and in connection with business transacted between UIH and third parties. UIH is entitled to recover actual and punitive damages.

Breach of Fiduciary Duty (Against Holdings and WCIL). As parties negotiating to form a joint venture with UIH, these defendants owed a fiduciary duty to UIH, and violated this duty by misrepresenting material facts and failing to disclose other material facts which these defendants should have disclosed. Accordingly, UIH is entitled to recover actual and punitive damages.

In addition to actual and punitive damages, on each of these eleven claims, UIH seeks pre- and post-judgment interest, as well as costs, attorneys' fees and expert witness fees, to the maximum extent permitted by law.

B. Defendants' Statement.

Defendants' general response to plaintiffs' statement is as follows:

At no time did any of the defendants make a legally binding promise or representation, or enter into a legally enforceable contract, to grant plaintiffs the right or option to acquire an equity interest of any amount in Wharf's cable television franchise. While the parties engaged in lengthy negotiations regarding the possibility of plaintiffs' investing in the franchise, they never reached agreement on all material terms and, in addition, several explicit conditions precedent to a legally-enforceable promise, representation or contract were never met, including:

- no definitive written agreement spelling out all material terms and conditions and approved by the

boards of directors of all participants was ever executed.

- participation by NYNEX or similar third party was never agreed upon.

- UIH never demonstrated that it had the financial capability to fund the project on an initial and a going-forward basis.

The only agreement that the parties ever reached was the Technical Cooperation Agreement dated September 25, 1992, under which UIH was to be paid money, rather than equity, for its services. Indeed, the Technical Cooperation Agreement explicitly provided that UIH would have no right or interest in the franchise.

For the reasons stated above and detailed in defendants' amended answer, motions to dismiss and motions for summary judgment, plaintiffs will not be able to establish one or more of the essential elements of each of their claims for relief. In summary, defendants contend:

1. This Court lacks subject matter jurisdiction over plaintiffs' claims for the reasons discussed in defendants' jurisdictional statement, set out in Paragraph II.B, above.

2. Plaintiffs' claims should be dismissed under the doctrine of *forum non conveniens*. Hong Kong is an adequate alternative forum to Colorado because plaintiffs' common law claims can be appropriately resolved under Hong Kong law. Hong Kong also has the most significant contacts with the parties, the proof and the witnesses, and judgment can be enforced there.

3. Plaintiffs' contract claim (Count I) fails because there was never a binding, enforceable agreement between the parties that gave either plaintiff the option or right to acquire an equity interest in Wharf Cable, or its parent corporation. At all times there were conditions precedent to a binding agreement that were unsatisfied. Among other things, UIHI's own filings with the SEC, its stock purchase agreement with its principal investor (Apollo) and the cable license application submitted to the Hong Kong government all negate the existence of such an option. In fact, the doctrines of estoppel and judicial estoppel preclude plaintiffs from now asserting an enforceable option agreement, because that assertion directly contradicts UIHI's representations to the SEC. Any claim of a separate oral option contract is further belied by the Technical Cooperation Agreement, which expressly precludes any option or oral agreement. In addition, if Colorado law applies, plaintiffs' contract is barred by the statute of frauds.

4. Plaintiffs' alternative promissory estoppel claim (Count II) fails for similar reasons. Defendants never made an unconditional promise to grant plaintiffs an option or right to invest on which plaintiffs could reasonably rely and act. UIHI's own representations to the SEC, its investors, and others confirm that no such promise was ever made, and the written Technical Cooperation Agreement negates any oral option. The promissory estoppel claim against Mr. Ng individually fails for the additional reason that he cannot be held personally liable for actions taken on behalf of his disclosed principals, the Wharf companies.

5. Plaintiffs have no valid claim for unjust enrichment (Count III) because they could not have reasonably expected to obtain compensation in the form of an equity interest in Wharf's cable franchise, given plaintiffs' own recognition that they had no right to such an interest. Furthermore, *quantum meruit* is limited to the reasonable value of services rendered,

not the value of any benefits conferred on Wharf Cable, and plaintiffs greatly exaggerate the value of the services that they claim to have provided. For example, as explained in the reports submitted by defendants' experts: (i) plaintiffs' contribution to the development and implementation of Wharf's cable television franchise was limited; (ii) what contributions plaintiffs did make were often in their own best interests, not Wharf Cable's; (iii) plaintiffs' recommendations were often not followed; and (iv) plaintiffs claim exclusive credit for decisions that were made primarily at the suggestion of others.

6. Plaintiffs' securities fraud claims (Counts IV, V, VI, VII & VIII) lack merit because plaintiffs cannot prove fraud in connection with the purchase or sale of a security within the meaning of the applicable statutes and their interpretation. Because plaintiffs never had an enforceable agreement to acquire an equity interest in Wharf's cable television enterprise, they do not satisfy the "purchase or sale" requirement. Plaintiffs also fail in the "in connection with" requirement because they cannot show Wharf made any representations related to the value of its securities. Finally, the statutes of frauds in Colorado's Uniform Commercial Code, C.R.S. §§ 4-8-319 and 4-1-206, bar plaintiffs' securities claims because they invalidate oral agreements for securities.

7. Plaintiffs' claims under the Colorado and federal securities laws, as well as their claim for promissory estoppel, also should be dismissed for failure to state causes of action under the governing Hong Kong law, which is specifically provided for in the Technical Cooperation Agreement. In addition, settled choice-of-law principles require the application of Hong Kong law because five of the six parties reside in Hong Kong, the parties' dealings and relationship were centered there, the parties contracted to litigate under Hong Kong law, and the Hong Kong government's interest in

its cable television enterprise outweighs any interest the State of Colorado may have in this dispute. Regardless of whether Hong Kong or United States law applies, however, plaintiffs have no valid securities law and promissory estoppel claims.

8. Plaintiffs cannot successfully claim common law fraud (Count IX) or negligent misrepresentation (Count X) because they assert misrepresentations only of future intent, not existing fact. Allegations that defendants promised to allow plaintiffs to invest in the cable television franchise sometime in the future are not cognizable under either theory of misrepresentation. In addition, plaintiffs are prohibited under the doctrines of estoppel and judicial estoppel from claiming reliance on defendants' alleged promises because UIHI's SEC filings establish that defendants never gave plaintiffs any legally binding assurance that they would acquire an equity interest in Wharf Cable. Finally, there is no evidence that defendants supplied plaintiffs false information for use in plaintiffs' transactions with third parties, which is required to prove negligent misrepresentation.

9. Plaintiffs' claim for breach of fiduciary duty (Count XI) is not supportable because the parties never had a relationship of "special trust and confidence;" rather, the parties negotiated on a purely arms-length basis, in pursuit of their own independent commercial interests. In the event plaintiffs could establish some sort of fiduciary relationship between the parties, plaintiffs breached their own duties by concealing accurate information about their financial health; by attempting to establish an entity that would function as Wharf Cable's direct competitor; by taking action to promote plaintiffs' independent programming interests to Wharf Cable's detriment; and by using defendants' facilities to further plaintiffs' wholly-unrelated interests.

In addition to the preceding, defendants contend that plaintiffs' claims are also barred by the following defenses and affirmative defenses:

First, plaintiffs' claims are barred by the fact that defendants acted at all times in good faith and did not in any way induce plaintiffs to act in a manner that entitles them to relief. As reflected in the parties' draft agreements, defendants were forthright about the existence of all conditions precedent to plaintiffs' investment.

Second, plaintiffs' claims are barred by their own material breaches and anticipatory repudiation of any alleged oral agreement. Plaintiffs' breaches include, among other things, concealing or failing to provide requested information about their financial condition and failing to obtain needed board approval.

Third, plaintiffs' claims are barred by their unclean hands, as manifested by their breaches of contract and fiduciary duty, and their deceptive actions in misleading the SEC, their investors, and others.

Fourth, defendants are entitled to a setoff in the event plaintiffs are awarded any damages, because of plaintiffs' own breaches of contract and fiduciary duties, as well as plaintiffs' misconduct in misrepresenting to the SEC, potential investors, and others their alleged right to invest in Wharf's cable franchise.

Fifth, plaintiffs' claims are barred by the doctrine of accord and satisfaction. After NYNEX withdrew from the negotiations and the proposed three-party venture, plaintiffs and defendants agreed that no potential equity interest would be discussed until after cable service launch and formation of a new consortium acceptable to defendants. This agreement was

in satisfaction of any obligations alleged to have been incurred under the parties' prior arrangements.

Sixth, plaintiffs' claims are barred by the doctrine of novation because they modified any alleged oral option agreement. When NYNEX withdrew from the three-party consortium, negotiations began anew in a completely different setting. Plaintiffs and defendants agreed that several conditions precedent had to occur before Wharf would agree to a two-party investment contract.

Seventh, the corporate defendants are separate legal entities and, therefore, plaintiffs must establish the liability of each defendant individually.

Eighth, plaintiffs have failed to mitigate their damages, if any.

Finally, defendants seek their fees and costs to the extent allowed by applicable law.

IV. STIPULATIONS

A. Stipulated Facts

The parties are still working on stipulations as to facts, and hope to come to agreement regarding several factual stipulations between now and the time of the Final Trial Preparation Conference in January 1997.

B. Stipulated Procedures

The parties stipulate to the procedures regarding the exchange of exhibits, objections to authenticity and admissibility of exhibits, designation of deposition testimony

and objections thereto specified in Section X.B of this Pretrial Order.

V. WITNESSES

A. Plaintiffs.

1. Plaintiffs intend to call the following witnesses:

Name	Residence	Form of Testimony Expected
Stephen Ng (adverse)	Hong Kong	By video deposition and/or in person
William Elsner	Denver	In person
Mark Schneider	Denver	In person
Michael Fries	Denver	In person
David D'Ottavio	Amsterdam, Neth.	In person
William Hudon	Denver	In person
Bernard Dvorak	Denver	In person
Paul Case	Denver	In person
Gene Schneider	Denver	In person
Ellen Spangler, Esq.	Denver	In person
R.W. Pittman	Reno, NV	In person
Blake Williams	Hong Kong	In person (if available); otherwise by deposition
Steve Moss	Hong Kong	In person (if available); otherwise by deposition

Clive Ng	Penang, Malaysia	In person (if available); otherwise by video deposition
William Ng	Penang, Malaysia	In person (if available); otherwise by video deposition
Pandora Pang	Los Angeles	In person
Henry Van Demark	Bangkok, Thailand	By video deposition
Emil Fung (adverse)	Hong Kong	By deposition and/or in person
Peter Woo (adverse)	Hong Kong	By deposition and/or in person
Gonzaga Li (adverse)	Hong Kong	By deposition and/or in person
Gerald Higginson (adverse)	Hong Kong	By deposition and/or in person
Robert M. Jones	Washington, D.C.	In person

2. Plaintiffs may call the following witnesses, if the need arises:

Name	Residence	Form of Testimony Expected
Mark Booth	Sydney, Australia	In person
Valerie Cover	Denver	In person
Warren Mobley	Hong Kong	In person

Sonjia Norman, Esq.	Hong Kong	In person (if available); otherwise by deposition
Simon Sutton	Palo Alto	In person
Jerry Zimmer	Denver	In person
David Hebble	Denver	In person
Ed Breen	Hatboro, PA	In person
Hal Krisbergh	Jenkintown, PA	In person
Ed Edenbach	Hatboro, PA	In person (if available); otherwise by deposition
Shei Beilis	Tel Aviv	In person
Martyn Lewis	London	In person
Hutchison Whampoa	Hong Kong	In person
G.B. Jensen (rebuttal)	Denver	In person
F.R. Wheeler (rebuttal)	Denver	In person
Newstar Corp.	Sydney	In person
Simon Yu (adverse)	Hong Kong	By deposition and/or in person
Vince Lam (adverse)	Hong Kong	By deposition and/or in person
Tim Bellis (adverse)	Hong Kong	By deposition and/or in person
Quinn Law (adverse)	Hong Kong	By deposition and/or in person

Alan Angelich (rebuttal)	Denver	In person
Paul Bortz (rebuttal)	Denver	In person
Joseph Bowles (rebuttal)	Colorado Springs	In person
Philip Nunn, Esq. (rebuttal)	Hong Kong	By deposition or in person
David Large (adverse)	San Francisco	By deposition and/or in person
Ted Liebst (adverse)	San Francisco	By deposition and/or in person
William Carey (adverse)	Denver	By deposition and/or in person
Martin Rogers (adverse)	Hong Kong	By deposition and/or in person
Records Custodian for Hanifen Imhoff	Denver	In person

Plaintiffs also may call any other witness endorsed or called by defendants, as well as other rebuttal witnesses, as necessary.

B. Defendants.

1. Defendants intend to call the following witnesses:

Name	Residence	Form of Testimony Expected
Stephen Ng	Hong Kong	In person

Gonzaga Li	Hong Kong	In person
Emil Y. Fung	Hong Kong	In person if available; otherwise by deposition
Samuel Wong	Hong Kong	In person
Peter Woo	Hong Kong	In person
Simon Yu	Hong Kong	In person
Yvonne S. Siu	Hong Kong and Australia	In person
P. Timothy Bellis	Hong Kong	In person
Bruce Davis	Hong Kong	In person
Vincent Fang	Hong Kong	In person
May Fung	Hong Kong	In person
Norris Hickerson	Hong Kong	In person
Vince Lam	Hong Kong	In person
Steve Moss	Hong Kong	In person if available; otherwise by deposition
Sonjia Norman	Hong Kong	In person if available; otherwise by deposition
William Carey	Denver	In person
David Large	San Francisco	In person
Ted Liebst	San Francisco	In person
Henry Van Demark	Manila, Phillippines	In person if available; otherwise by deposition
Paul Duffy	Manila, Phillippines	In person

Donald Oswald	Bangkok, Thailand	In person
Edgar Ebenbach	Hatboro, PA	In person if available; otherwise by deposition
Frank Bateson	Ringwood, UK	In person
Melvyn Sears	London	In person
Colin Chapman	Palo Alto, CA	Deposition

Defendants also intend to call as adverse witnesses the following current or former employees of plaintiffs in the event plaintiffs call them as witnesses at trial: David D'Ottavio, Bernard G. Dvorak, William J. Elsner, Michael Fries, William Hudon, William Pittman, Gene W. Schneider, Mark G. Schneider, Ellen P. Spangler and Blake Williams.

2. Defendants may call the following witnesses if the need arises:

Name	Residence	Form of Testimony Expected
Alan Burke	Hove, UK	In person
Paul Case	Denver	In person
Garth Jensen	Denver	In person
David Keefe	Los Angeles	In person
Dr. William Leininger	Kuala Lumpur, Malaysia	In person
Alfred Leung	Hong Kong	In person

Warren Mobley	Hong Kong	In person if available; otherwise by deposition
Clive Ng	Penang, Malaysia	In person if available; otherwise by deposition
William Ng	Penang, Malaysia	In person if available; otherwise by deposition
William Parker	Hong Kong	In person
Pandora Pang	Los Angeles	Deposition
James Ramsey	London	In person
Martin Rogers	Hong Kong	In person
Scientific Atlanta	Atlanta, GA	In person
Simon Sutton	Palo Alto	In person if available; otherwise by deposition
Thomas Tang	Hong Kong	In person
George Taylor	Phillippines	In person
Frank Webb	Sheffield, UK	In person
Henry Wise	Aldeburgh, UK	In person
Chase Manhattan Bank	New York and Hong Kong	In person

Defendants also may call any other witness listed by plaintiffs that they do not call, plus rebuttal witnesses, as necessary.

VI. EXHIBITS

A. Plaintiffs.

Plaintiffs may offer any of the exhibits listed on Exhibit A hereto. Plaintiffs definitely intend to offer those exhibits marked with an asterisk. Plaintiffs also may offer any exhibit listed by defendants and rebuttal exhibits as necessary. Additionally, plaintiffs reserve the right to offer as an exhibit any pleading filed or served on behalf of defendants.

B. Defendants.

Defendants may offer any of the exhibits listed on Exhibit B hereto, as well as any exhibit listed by plaintiffs and rebuttal exhibits as necessary. Exhibit B includes a listing of demonstrative exhibits that defendants may utilize at trial. Defendants definitely intend to offer those exhibits marked with an asterisk on Exhibit B. Additionally, defendants reserve the right to offer as an exhibit any pleading filed or served on behalf of plaintiffs.

VII. PENDING MOTIONS TO BE DECIDED BEFORE TRIAL

1. Defendants' Motions for Summary Judgment (motions, briefs and supporting exhibits filed August 14, 1995)

a. Plaintiffs' combined brief and exhibits in opposition (filed September 22, 1995)

b. Defendants' combined reply brief and supporting exhibits (filed October 20, 1995)

c. Plaintiffs' Submission of Supplemental Affidavit of Bernard G. Dvorak in Opposition to Wharf's Summary Judgment Motions (filed November 7, 1995)

d. Plaintiffs' Submission of Testimony from the November 1995 Deposition of Sonjia Norman (to be filed by or before February 29, 1996).

2. Plaintiffs' Motion to Compel *In Camera* Review of Defendants' Allegedly Privileged Documents (to be filed with Magistrate Judge Pringle on or before February 28, 1996)

VIII. UNUSUAL ISSUES OF LAW

A. Plaintiffs' Position

None. Federal and Colorado statutes govern plaintiffs' securities fraud claims. Choice of law analysis is inapplicable to these claims. Because this case centers around breach of a contract entered into in Colorado for services to be performed in part in Colorado and misrepresentations made and directed to Colorado, the Colorado law governs the common law claims.

B. Defendants' Position

As previously indicated, various of plaintiffs' claims are invalid under controlling Hong Kong law.

IX. FURTHER LIMITATIONS TO BE PLACED ON DISCOVERY

None.

X. DISCOVERY

Discovery has been completed. Unless otherwise ordered, upon a showing of good cause in an appropriate motion, there will be no other discovery after entry of the Pretrial Order.

However, as noted in Section XI.D. below, plaintiffs believe that defendants' recent production of additional documents may necessitate the reopening of deposition discovery on a limited basis.

XI. COUNSELS' CERTIFICATION RE SETTLEMENT, OTHER MATTERS TO BE CONSIDERED AT PRETRIAL CONFERENCE AND ESTIMATED TIME FOR TRIAL

Undersigned counsel certify the following:

A. Settlement

1. Counsel met in person on February 24, 1995 and September 13, 1995 to discuss in good faith the settlement of the case.

2. The participants in the settlement conferences included counsel and party representatives.

3. The parties were promptly informed of all offers of settlement.

4. The Magistrate Judge has not set any further settlement conferences, but has ordered the parties to provide supplemental confidential settlement statements by April 3, 1996, advising the Court of any changes in the status of the case and of the parties' current settlement position. It is

possible that additional settlement conferences will be held thereafter, and defendants have urged the Magistrate to do so.

5. It appears from the discussion by all counsel that there is little possibility of settlement.

B. Other matters considered at the Pretrial Conference:

The parties have agreed to follow, and at the November 17, 1995 Pretrial Conference the Court authorized the parties to follow, the following procedures regarding (1) the exchange of exhibits and objections to authenticity and admissibility of exhibits, and (2) the designation of testimony of witnesses to be called by depositions and objections thereto. The schedule proposed below ties the relevant deadlines to the Final Trial Preparation Conference, rather than to the trial date, and requires the relevant disclosures sooner than contemplated under the Court's normal procedures.

The intent of these procedures is, well in advance of the Final Trial Preparation Conference, to put into focus those evidentiary matters that are in dispute.

1. Trial Exhibits and Objections. No later than **October 21, 1996,** each side shall provide the other side with copies of its trial exhibits, including demonstrative exhibits, as identified in this Pretrial Order and any supplements permitted hereunder, as well as a Final Trial Exhibit List, which may delete from but not add to the exhibit lists in this Pretrial Order. No later than **November 19, 1996**, each side shall serve on the opposing side and file with the Court a list disclosing any objection, together with the grounds therefor, that may be made to the authenticity and admissibility of the opposing side's trial exhibits, as identified in this Pretrial Order and any supplements permitted hereunder. Any objections not so

disclosed shall be deemed waived unless excused by the Court for good cause shown.

2. Deposition Testimony and Objections.

(a) For each witness which a side expects to call to testify by written or videotape deposition, that side shall, no later than **November 19, 1996**, serve on the opposing side and file with the Court, a written designation of the page and line number(s) of the transcript of the testimony to be presented.

(b) No later than **December 4, 1996**, each side shall serve on the opposing side and file with the Court (1) any objection, together with the grounds therefor that may be made to the admissibility of the deposition testimony designated by the opposing side; and (2) any counterdesignation, by page number and line, of testimony from the depositions designated by the opposing side.

(c) No later than **December 13, 1996**, each side shall serve on the opposing side and file with the Court (1) any objection, together with the grounds therefor that may be made to the admissibility of the testimony referenced in the previous subparagraph; and (2) any designation of "redirect" deposition testimony, by page number and line.

(d) If either side designates "redirect" deposition testimony, then no later than **December 19, 1996,** the opposing side shall serve on the designating side and file with the Court (1) any objection, together with the grounds therefor, that may be made to the admissibility of the testimony referenced in the previous subparagraph; and (2) any designation of "recross" deposition testimony, by page number and line.

(e) If either side designates "recross" deposition testimony, then no later than **December 23, 1996**, the opposing

side shall serve on the designating side and file with the Court any objections, together with the grounds therefor.

Unless excused by the Court for good cause shown, a party's failure to make an objection to particular deposition testimony within the time limits set forth above shall be deemed a waiver of those objections. Regardless of a party's designation of its objections to deposition testimony, any objections to form or foundation that were not asserted at the time of the deposition shall be deemed waived unless excused by the Court for good cause shown.

C. Trial Efficiencies

This case will be tried to a jury, and is set for a one month trial commencing **February 17, 1997 at 9:00 a.m.** The Final Trial Preparation Conference will be held on **January 17, 1997 at 4:30 p.m.**

D. Possible Need to Reopen Deposition Discovery

1. Plaintiffs' Position:

For the following reason, UIH, with good cause, intends to petition the Court for leave to complete a limited amount of additional deposition discovery:

On November 16, 1995 and on February 15, 1996, Wharf produced several new documents from the files of Wharf's chairman, Peter Woo, and Wharf's managing director, defendant Stephen Ng. UIH believes that certain of these documents are key to the case. When UIH deposed Messrs. Woo and Ng in Hong Kong during May and June 1995, these documents had not been produced, and UIH was unaware that the documents even existed. Therefore, UIH was unable

to question either Mr. Woo or Mr. Ng regarding these documents.

As a result of Wharf's recent production of these documents, undersigned counsel, in compliance with Local Rule 7.1, is currently in discussion with Wharf's counsel regarding whether, and if so, on what terms, Wharf will consent to allow UIH to reopen the depositions of Messrs. Ng and Woo and to take a short deposition of Henry Wise, a witness implicated in the February 15, 1996 production. Depending on Wharf's response, UIH anticipates the need to file an appropriate motion with the Court concerning these issues.

2. Defendants' Position:

Defendants disagree with plaintiffs' need to reopen discovery in order to further depose any witness because the few documents recently produced to plaintiffs do not warrant additional discovery. However, in order to avoid burdening the Court with an unnecessary discovery dispute, defendants have offered to determine Mr. Woo's availability to be deposed by telephone for the brief period (less than two hours) requested by plaintiffs in a letter dated February 8, 1996. It is possible that he may be coming to the U.S., obviating the need to arrange for a conference call across several time zones. Defendants did not receive plaintiffs' request to reopen Mr. Ng's deposition until February 19, 1996, and their initial reaction is that the few recently-produced documents do not merit reopening his deposition. Similarly, defendants have just received plaintiffs' request to depose Mr. Wise, and they disagree that the few recently-produced documents justify taking Mr. Wise's deposition, particularly when he was disclosed as a person with relevant knowledge over ten months ago, and numerous documents were previously produced from his files. Yet, plaintiffs chose not to notice his deposition before discovery closed.

XII. EFFECT OF PRETRIAL ORDER

Hereafter, this Pretrial Order will control the subsequent course of this action and the trial, and may not be amended except by consent of the parties and approval by the Court or by order of the Court to prevent manifest injustice. The pleadings are deemed merged herein. This Pretrial Order supersedes the Preliminary Pretrial Order and the Discovery and Scheduling Order.

Entered this 4th day of March, 1996.

BY THE COURT:

/s/ Wiley Y. Daniel
Wiley Y. Daniel
United States District Judge

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APPENDIX J

Excerpt from Direct Examination of W. Elsner
February 18, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2336; Transcript 373)

Excerpt from Direct Examination of W. Elsner
February 18, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2336; Transcript 373)

Communications. That company will provide wireless--wireless, high bandwidth Internet or other kind of data services. If you took a little antenna about this big around (indicating), and you put it on top of your house or your business and you wanted to get data services to your location, you could do it with the same reliability and the same degree of speed that you could with fiber optic cables just by having this wireless feed hit that antenna.

That's a company that's going to get licenses through the auction process that the Federal Communications Commission will have later this year we hope, and so we will bid on licenses from the government, and we will pursue that same kind of frequency or spectrum through grants or purchases of those frequencies in other countries as well.

So it's just an inexpensive way to get data to homes and businesses.

Q Any other boards that you're serving on?

A No, that's it.

Q Okay. Let me take you to United Cable. You were with United Cable starting in the late 1970s?

A From 1979, yes.

Q All right. First of all, tell us what United Cable was and then tell us a little bit more about why you joined it and how you got into it. But first tell us, what was United Cable?

APPENDIX K

Excerpt from Direct Examination of W. Elsner
February 18, 1997 & February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2338-2366; Transcript 375-403)

Excerpt from Direct Examination of W. Elsner
February 18, 1997 & February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2338-2366; Transcript 375-403)

Q Was Mr. Gene Schneider associated with United Cable when you went over there?

A Yes.

Q Tell us about Mr. Schneider.

A I first met Gene in 1977 because the way I first was introduced to United Cable was one of their--they were one of my clients when I was a senior at Arthur Andersen. And I met him, and he had already had 22 years of experience in the business when I first met him. So he was somebody that had been in the business since its real inception.

There were a few cable television properties that had been built prior to the time that he got involved, but not very many. And what he did, is he and his brother, Richard, formed a company with some other people, some that you may have heard the names of in town here, primarily Bill Daniels of Daniels & Associates. They--Bill had seen cable television, or had seen television for the first time. I think he was selling insurance. He had gone into an establishment in Denver. He had seen a prize fight on a--I think Channel 2 was the first channel ever broadcast here. He saw that on television and thought everybody should have this.

And so he, with Gene Schneider and Richard Schneider, decided that they were going to take cable television to Casper, Wyoming. And so they put up an antenna, or a microwave, built the signal from Denver to Casper, Wyoming, and they showed that one transmitted Channel 2 signal up in Casper.

And that I think was the first television in Wyoming, and that was the beginning of United Cable Television Corporation.

Gene built that company by acquiring rights--with his brother, Richard. Richard was always in the business until he passed away, unfortunately, a few years ago. But Bill Daniels went more into the brokerage side. Gene stayed in the build and operate cable properties side. And then through getting licenses and building cable television systems, built it into the eighth largest cable set of properties in the U. S. with more than a million subscribers. And he's been a pioneer since the beginning of the industry, well respected. He's been on--in capacities with the National Cable Association, a very astute--

Q Okay.

A --well-regarded person.

Q So you went over to United Cable at the end of the '70s. Tell us what you did there.

A In the beginning, I helped to work with their financial systems. I was the controller of the company, so I was their chief accounting officer. I helped to, you know, improve financial and accounting systems, took care of the reporting, the SEC reporting, supervised all of the accounts payable, payroll, those kinds of internal workings of the company. And I did that for the first two years I was there.

Q Okay. Tell us about the rest of it, and I have to ask you to slow down a little bit so that we can make sure we get it all.

A Okay. In 1981, United Cable had been very successful in acquiring the rights from governments. You went in, and you prepared proposals, and you did presentations. And we were fortunate enough to be able to get the rights to build systems

like Scottsdale, Arizona, Oakland County, Michigan, just a number of properties.

And we--I took the charge as treasurer. I became treasurer, and I began doing the financings for those properties, and I put together quite a number of financings, some centrally. I put in debt facilities for United Cable itself. I also put a lot of project-based financings together where we put in debt and then raised equity into companies that owned individual cable properties, like a Scottsdale, Arizona, or an Oakland County, Michigan, or something like that.

So I did an awful lot of fundraising, say, for the period from 1981 through 1983.

In 1983, I hired a treasurer who had been an associate of mine at--back in the Arthur Andersen days, who I regarded highly, and he started doing a lot of the fundraising part, and I took a broader role as vice president of finance, where I had, you know, quite a number of responsibilities. I was responsible for administration, MIS, internal audit, a lot of things. In addition--

Q Tell us--I'm sorry. Tell us what MIS is.

A Oh, I'm sorry, Management Information Services, where you have computer systems that have to be coordinated so you know the people you hook up to the service, you then build, and that hits the information or accounting records, and you can keep track of it all. So that's the computer networks inside the company.

Q Okay. And tell us what you did when you took over as vice president?

A Well, those were the kinds of things. I broadened my responsibilities and took over those additional functions; you know, computer, internal audit, administration, a number of things like that.

And then I think it was two years after that, I became senior vice president, chief financial officer of the company, which in addition to what I was doing in terms of my vice president finance activities, I also took responsibility for all the new business of the company. So corporate development, any time there were mergers or acquisitions or where we were going to get a new property started. In cases where we went into new businesses, I took the responsibility for that. Not long after that time, we decided we would broaden how we brought entertainment product to people, and we--in addition to running cable properties, we got involved with Blockbuster Video, so I was responsible for that part.

Q You're the guy, okay.

A Well, I wasn't Blockbuster itself, but--

Q Okay.

A --I was responsible for making an investment in Blockbuster and in starting to construct some stores. And I took responsibility for taking United Cable and starting to get it going in international markets because by that point in time, most of the U. S. had cable properties or cable systems to serve them already, and so it was time that we would start looking outside the United States to see if there were places where we could say, take this same talent or expertise and help to deploy systems in foreign countries. And so I took that as well.

So we had--we had a group that ran the domestic properties that I didn't manage the operations there, but

anything that was outside of that core group of properties, new businesses or investments or finance or mergers and acquisitions or development, I had all of that.

Q All right. Now, eventually, you left United Cable and helped form UIH; is that right?

A That's correct.

Q Tell us about that, please.

A In about the last two years that I was at United Cable, one of the biggest things that I worked on was the merger of United Cable into United Artists Entertainment. And by the time that merger was completed in--I think it was May of 1989, United Artists had integrated all of the United Cable people into the management team that was expected to go on, and I was going to be in charge of development and new business for United Artists, this large cable television and theater operator. But they didn't have the same enthusiasm towards some of the new businesses, especially the international businesses that the group of us at United Cable that had first put them together had. And so they didn't know what to do with them.

So they offered to us the ability to find the money and buy those properties if we wanted to, and it included cable properties in Norway, Sweden and Israel and the Blockbuster Video stores. And a group of us left, including Gene Schneider, Mark Schneider, myself, Bernie Dvorak and a few others, and we formed United International Holdings. We initially put together some money out of what we could invest and some friends and business associates, and then we went about trying to raise the money to be able to buy those cable assets in the Blockbuster Video stores.

And, fortunately, we were successful in both of those endeavors, and through the help of people like U.S. West on the cable side and venture capital sources like Prudential and others on the Blockbuster Video side, we were able to have United International, the partnership--United International Holdings was a partnership. It owned two entities, UI Video, which was the company that owned the Blockbuster Video stores and was opening Blockbuster stores, and United International Holdings, Inc., which was the international cable television operator.

Q All right. Now, just tell me a little bit about those early days, the first couple of years, and then I'm going to take you to 1991, and we're going to start talking about Hong Kong. But tell me about the atmosphere of the company and what it was like and how it was in those early days.

A Well, it was high energy and a lot of enthusiasm and a lot of motivation. We were a small company. I think we started with six people, and as I said, with the money that we and business associates put into it, we had a big task to tackle because cable television is an expensive kind of business to put together on the front end. You put a lot of money in, but then you realize your returns over years and years and years. So it's a good business to be in, but it's expensive in the beginning.

So we had to do an awful lot of raising of money and evaluation and investment in new properties, and it was high energy, high travel, everybody motivated to get the job done. And, you know, you talked--I was the--you know, Gene was involved quite a bit, but I was the day-to-day, in-charge, get-it-done person on the spot. And, you know, everybody was in a different country at a different time, and you talked to people all hours of the day and night trying to keep everything coordinated and moving and--

Q Well, let me ask this: Was it the kind of company where you wrote everything down all the time?

A No, we--we didn't have--the way we got going inasmuch as we had to accomplish, we didn't have any bureaucracy, and there was not a lot of back-filling with paper or anything like that. We got the job done. That was--that was what--I mean, success and making these projects succeed and be valuable and getting them financed and running and get the management in place and those things, that was success. The paper trail you left behind didn't matter.

Q All right. Now, with respect to your board of directors, how formal was that, and who was your board of directors in those first few years, taking you right into 1991-'92?

A The board was--United Cable was a very successful company, and it had a good board of directors, and most of the money that came into United International Holdings to start, it came from people that were that board of directors. And most all of those people came over and became directors of United International Holdings.

In addition, there were three other people, I think it was, that hadn't been directors of United Cable, but had invested in UIH. I'll use that as well. And so it was--the board were--it was composed of people that had a reason to be there. They were there because they had an investment and they were interested in the success of the business.

Q You all knew each other?

A Right.

Q You all communicated all the time?

A Right.

Q And you knew what was going on?

A Yes.

Q All right. Now, I'm going to jump ahead for a minute here, and I'm going to give you a chance to rest your voice.

In 1992, did you make a trip to Hong Kong?

A Yes, I did.

Q And did you meet with a Mr. Gonzaga Li, the chief executive officer of Wharf Holding?

A Yes, I did.

Q And did you at that time show him a videotape describing your company?

A Yes, I did.

Q Have you looked at the Ernie Bjorkman videotape that we've described as Exhibit 1?

A Yes, I have.

Q Is that the videotape you showed to Mr. Li?

A Yes, it was.

MR. CHASE: Your Honor, with the Court's permission, I'd like to show the videotape. It's 19 minutes, and I think it would save some voice.

THE COURT: The objection is overruled. I will admit it. Go ahead.

MR. CHASE: Thank you.

(Plaintiff's Exhibit 1 was received in evidence.)

MR. CHASE: But I've got to work an electric appliance.

THE COURT: You know, it used to be we said that a lawyer was a smart kid that couldn't stand the sight of blood, but anymore, they're people that couldn't get into engineering school, I think.

MR. CHASE: There's a lot of stuff back here. I'm afraid I'm going to put it in the wrong thing.

MR. MUNSON: Your Honor, on the objection that we discussed earlier that you just overruled, I wonder if in light of the nature of the tape that the objection was made, if this tape is being offered not for the truth of what's in it, but rather--

THE COURT: It's being offered to show that this is what he gave to the defendants, and I, for want of a better word, I'll say this is the pitch.

MR. MUNSON: Well, his testimony, Your Honor, I think was just that he gave it to him.

THE COURT: That's right, the same as giving somebody a brochure or anything else.

MR. MUNSON: But the jury is going to see it.

THE COURT: That's right. They're going to see what he gave them.

MR. MUNSON: Can the jury be instructed that this is--that this is being shown not--

MR. CHASE: No offense, Mr. Munson. I really didn't mean that, but I always like objections to music. I think it adds to it.

THE COURT: It's--this--I think you understand that this is the video that he gave to the defendant's executive, showing them what his company was and what he was representing. It's a sales promotion. That's what it's for.

MR. MUNSON: Thank you, Your Honor.

MR. CHASE: Can I call my children?

THE COURT: Just like commercials, they're always loud.

MR. MUNSON: Excuse me, Your Honor.

Mr. Chase, I don't mean to make your life difficult, but our monitor here isn't working.

MR. CHASE: I can't do monitors. You can watch mine. That's the best I can do on that. I mean, look what I've got going with volume.

(Whereupon, the videotape illustration, Exhibit No. 1, was played for the jury.)

MR. CHASE: Your Honor, I'd like to just ask Mr. Elsner one question, and then I suggest we probably recess for the day.

THE COURT: Okay.

Q The question is, Mr. Elsner, is that a fair and accurate representation of your company in 1992?

A Yes, it is.

MR. CHASE: I suggest we recess.

THE COURT: Okay. Come back, and let's go on with this testimony at 9: 00 tomorrow. Drive safely, and have a good evening.

(4: 43 p.m. - Jury excused.)

THE COURT: We'll be in recess.

* * *

(Testimony Continued on February 20, 1997; Aplt. App. 2354; Transcript 391)

(At 9:05 a.m. on February 20, 1997, in the United States District Court at Denver, Colorado, before the HONORABLE JOHN L. KANE, JR. , U.S. District Judge, with Messrs. Chase and Wilson appearing as counsel for the plaintiffs, and Messrs. Bauer, Jentes, Munson, and Tully appearing as counsel for the defendants, the following proceedings were had:)

THE COURT: Thank you.

(9:06 a.m. - Jury present.)

THE COURT: Go ahead, please, Mr. Chase.

MR. CHASE: Good morning.

WILLIAM ELSNER

called as a witness on behalf of the plaintiffs, having been previously sworn, was examined and further testified as follows:

DIRECT EXAMINATION

BY MR. CHASE:

Q Mr. Elsner, first, the good news. I have no more movies this morning.

Let me ask you now, we've talked about UIH. Tell us about UIH Asia. Who is UIH Asia?

A When we first became interested in deciding whether there were places that could use our services, and cable television networks and that area, we met some people, William and Clive Ng, who were prominent Malaysian business people who had contacts throughout the region.

What we decided to do is that we would put a company together, with us owning the majority of it, and the Ngs owning a 20 per cent piece of it.

Q Let me clarify. To your knowledge, are the Ngs any relation to Mr. Stephen Ng?

A No.

Q Okay.

A Stephen would answer that better than me, but, to my knowledge, no.

Q Okay.

A But, so we had these prominent business people, well respected in the region, and we, together, were looking at different countries to see which ones had the potential for cable television, and so we put together this company, UIH Asia, that was going to be active in the region. So it was just a--it was an entity we did business through.

Q Was UIH the managing partner of the partnership?

A You know, I don't know whether it ever got formulated as a legal entity, as a partnership, or whether it was a corporation, but UIH was clearly in charge of it and in the lead of it.

Q And how would it work? Would UIH go and identify investments, and then bring it to the partnership, or what?

A Both directions. We were looking from the top down at the countries that had the most growth and the best economic development, and would be the most appropriate, and they were identifying governmental progress, or enabling legislation in different countries that might make it a good time to be involved in those countries, so both of us were looking at the same time.

Q All right. Now, let me turn the subject to the general way in which UIH would identify a country or a territory or a market or region in which it would decide to make an investment.

A Well, you'd start at the very beginning by--there's certain things that would cause you not to take any time at all, and that would be if the government didn't allow foreign investment, or if there wasn't adequate economic capability or wealth, you know, the kind of disposable income that you could buy cable

television and programming with. You had to have a number of things like that before you'd even start to look.

And once you became convinced that a country could support and would benefit by having cable services, or a cable network in that country, then you would get more active and try to find out whether there was legislation that enabled cable, whether there were going to be grants of licenses, whether somebody already had a franchise, for instance, and so you'd do it at various--you kind of start at the, you know, the basics, what you have to have, and then you keep taking a step further until you decided that there was a real opportunity, and you went into business.

Q Would you look for partners in the region that you would be going into?

A More likely, you know, we had the Ngs as partners for the region.

Q Right.

A You'd look for partners in a specific business, so, for instance, in a Taiwan, Thailand, you'd have a specific partner in that country, not one in the region, because different people have different business involvement country-by-country, not so much regionally.

Q Okay, but I'm talking now, once you've identified a country that you're going into, do you then look for a local partner?

A Right.

Q And do you use the term "strategic partner"?

A I use the term "strategic partner" a lot, yes.

Q What does it mean in your business?

A You have a financial partner--and I'd differentiate between two terms. One is a financial partner, and the other is a strategic partner.

A financial partner is somebody that invests in your entity, or co-invests with you, and all they bring is money and help you get the capital to get the project done.

A strategic partner is a financial partner that invests money in the project and shares ownership, but they'd also--you're expecting them to do more, so, for instance, when we brought US West into our Norway/Sweden/Hungary projects, we didn't bring US West in only for the money. I mean, that was necessary and that was important for us. We didn't call them a financial partner. We called them a strategic partner, because they brought expertise in telephony as well.

So, strategic is both money expertise.

Q Is strategic ever used in your business in a sense where a capital investment is not involved; strategic partner?

A You wouldn't use the term "partner" if they weren't a partner and owner with you.

Q So it has a very clear meaning in your industry?

A Yes.

MR. JENTES: Excuse me, Your Honor. I just object to the leading nature of the questions.

THE COURT: Sustained.

Q (by Mr. Chase) Does it have a clear meaning in your industry?

A It has a clear meaning to me in my--in the industry, yes.

Q All right. Now, once you've identified the partner and the locality you're going to go into, what do you do next, in general?

A You've said we've identified the partner. Well, you have to--you know, it's a two-part thing. At first, you learn more, and once you're convinced that, at least on the top level, you'd like to be involved, you secure the rights to be involved. You make sure that you have an understanding and an agreement as to who's going to do what, who's going to own what with your partner, and you set out to either buy or apply for the rights to be in the cable television business in that locale.

Q All right. So, if you're talking about a region, say--let's take Taiwan, for example--and there's a local partner there, how would you approach that, generally?

A Well, first, you have to be comfortable that this is a good partner to be in business with. You have to study, you know, their background and you have discussions with them, and once you know that--you think you can be successful together, then you would agree who's going to own how much, you know, how you share in that business, and then who's going to do what parts of it, who's responsible for providing what kinds of expertise or, you know.

We'd always expect our local partner to have the government contacts, to know the local business environment. What we'd bring in is, you know, a history of operating cable

television businesses, so you'd try to make sure that you were using both sets of skills appropriately.

Q Now, in general, do you apply the skill of your company and the expertise of your company before or after you've secured your right to invest?

A We wouldn't try to add value to somebody else's project if we weren't a part of it. We would know that we were going to be an owner, and then you'd try to make the whole thing worth more, you know, successful for everybody's benefit.

Q So, explain what you mean, somebody else's project... adding value...and knowing you'd be an owner. Explain how that works.

A We were never consultants. We never would hold ourselves out that we would provide expertise for a fee. What we did is we were building the equity value of our company by owning interests in cable properties, and using our expertise to make them as successful as we possibly could. So, we would lend resources--I think that's what you're getting at.

I mean, we would put people into the project, if that's what made sense, or if they had issues where you needed to help find qualified people, we'd help with that.

Q Now, in general, would you ever do that before you had secured the right to invest?

A No; absolutely not.

Q Now, once you secure the right to invest, do you then assist in getting the franchise?

A Wherever we can. We would hope that our partner, the local person that was--had been in that business climate, you know, in that country, that they would have the insight to know what the government wanted, et cetera, but we would do everything that we could ; try to make the bid document as well thought through, and, you know, we'd devote resources wherever we could help to make that, you know, a winning bid.

Q Now, we've talked about you obtaining a right to invest. At what point would UIH make a decision as to whether it actually would invest? How does that work?

A We--before we put an awful lot of resources to it, we would be pretty convinced that we wanted to invest in that project, but it would depend on what the nature of that right to invest was. You would make your decision when it came time to perform on that.

Q Let me ask it differently. Once you've obtained the right to invest, what do you do, then, about obtaining the capital or the money so that you can invest?

A It's going to vary from project to project, but the normal course for us was, I think I explained yesterday that we didn't have all the money in the world. We had reasonable financial resources, and what we would normally do is we'd start the project out with our own money, with money that we had within UIH, the central company, but then we had had very good success and had never failed at bringing together project financing.

So, what we did is, we got--we would help start the project, initially funding it out of our own pockets. Then we'd bring other financial investors in to help us with the funding that we needed. They would invest in our company, give us the

money, and then we would direct it into the different projects that we had, oftentimes on a project-by-project basis.

Q And did you have outs in the event you weren't able to raise the money?

A I never put the company at risk that if we didn't have the money, that the whole company could fail or not perform on an obligation it had. So, we would make sure that we knew what our requirements were, and that we could meet those requirements. We wouldn't bind ourselves to something that we weren't absolutely sure we could perform on.

Q And when you were assisting, and, generally, when you assist with franchise applications and you're looking for money, does the party who you got the right from, do they have outs while you're out doing these things?

A No. You wouldn't put that kind of effort in without having it--that firm.

Q Explain that.

A You know, you're talking about a company that it's real reason for success and why it could succeed was because the expertise and the people that it had, and you were taking these people and you would put in--and expertise in two things:

One, and primarily, we were good cable operators; but, secondarily, we had credibility with financial institutions, and you wouldn't take those resources that were valuable to us, the expertise of our people, both in helping a project, and in taking the time to raise money, unless you absolutely knew that when you succeeded at raising that money, you were going to be able to be an owner of that project.

Q Okay. Now, let me ask you to look at Exhibit 462 in the exhibit book, and I'm going to put a chart up here, so nobody has to worry about anything yet.

(Pause.)

Q (by Mr. Chase) Mr. Elsner, do you have 462 handy?

A Yes, I do.

Q Okay. Tell us what this--the last page of 462, please, the chart.

A Okay, I have that.

Q Now, can you see across the courtroom to see that this chart we're showing the jury is the same chart that you have in front of you?

A It looks kind of the same, but it's on an angle, so I can't see what the numbers are, but, yeah, it's the same chart.

Q You can look at the one that's in front of you. I'll tell you that this is simply a copy of that.

Tell us what this is, please.

A This shows the countries that we had raised money for to be able to be owners of cable television projects, and I don't know that--the date of the letter was September 15th, 1992, so it would have showed you what we had accomplished on the fund-raising side through that point in time.

Q Through September, '92?

A Yes.

Q Okay. Do you know, roughly, how much UIH has raised since that time?

A It'd be, oh, half a billion dollars kind of a number. I can't tell you exactly. I haven't been there for awhile, and, you know, I don't have that tabulated, but it's a big number.

Q All right. Let me get back to this chart for a second. Let's just take one and explain how this works and how you do your funding, and go ahead and just take Norkable, the Norway system, 1988. Is that what it says?

A Yes.

Q Yeah, 1988.

A 1988 means when we first got involved, and that was through United Cable Television, before UIH even got formed, but the funding was done while it was managed by UIH.

What we did is we went to a group of local banks, Christiana Bank was the lead. It was a Norwegian bank, and we raised the debt portion of the money in Norwegian krona, which you do your bank financing, generally, in the local market. That just makes sense. Those people are closer. They're more comfortable with that place to do business.

And then, we raised the--we had people invest into a partnership that we managed to raise the equity for this project, and, in this case, the partner was US West, and US West put up a significant part of the money. They had certain board rights, where they could monitor what was going on, but we were the managing partner, and we took care of making sure that the business was operated properly, and we took care of the bank financing, and everything like that.

So, in the case of Norkable, we took $177 million, and more than half of it was done through debt, and the balance through equity; some of ours, but predominantly US West's money.

Q Explain equity for a second. What do you mean by that?

A Equity is money that goes in for ownership to buy ownership of a company, not as a loan to a company, so a loan, you get paid back with a stated interest rate. Equity, you own a piece of it and you do well if the business thrives. If it doesn't, you don't, but it's ownership, it's not money to be repaid.

Q So if I read this chart correctly, as of 1992, UIH had raised a total of $687,700,000?

A For those projects, yes.

Q And that's roughly 50/50 debt and equity?

A That's correct.

Q Okay. Now, you mentioned a moment ago that you had relations with the banks. Can you explain that?

A We--I'm not exactly sure what you're--I, for instance, I mentioned yesterday, I was a treasurer for United Cable Television, starting in about 1981, and then had been a senior financial officer of that company through its merger in '89, and a big part of that was knowing who were the lenders and working with lenders to the cable television business.

So, through that, and through, then, the subsequent financings that we did at UIH, we had great relationships. We did a lot of business with banks.

Q Well, that's kind of what I'm getting at. When you're in the cable TV industry, does it facilitate your relationship for bank loans for cable television?

A Yes. They want to know who's taking care of the money that they lend in.

APPENDIX L

Excerpt from Plaintiffs' Opening Statement

February 19, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2211:02-2213:16; Transcript 248:02-250:16)

Excerpt from Plaintiffs' Opening Statement

February 19, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2211:02-2213:16; Transcript 248:02-250:16)

In exchange for this, in exchange for doing these things, you will be given the right to acquire a 10 per cent interest in the project."

Now, there was some talk; would it be 10, would it be 15, would it be 20? But it was a minimum of 10 per cent interest in the project. Now, again, I'm not talking about a free ride here. UIH wasn't saying, "We'll do this and give us 10 per cent." UIH was saying, "We'll do this for you on the license, and give us the right to acquire 10 per cent of your project," and that's the deal, and UIH hits the ground running.

In August, 1992, UIH commits the troops, sends people to Hong Kong at its expense, and these people start working with Wharf on the franchise application. So, you've got the thing underway.

Now, remember, I mentioned before: UIH has to be able to raise the money. Now, Wharf did not want, at this time, UIH's right to invest to be conditional. Wharf wanted it to be unconditional. It didn't want to show the Hong Kong government in the bid that UIH may come into the project if it is able to raise the money.

So, in this case, what you will see is during this period of time, Wharf said, "No conditions. UIH comes in, 10 per cent partner, but dilution; dilution," meaning, you come in, you fund your capital contributions. If it ever gets too steep for you, then you just stop and you get diluted. You go to a lower per cent, and that was the deal during this period of time.

UIH's lawyer, Sonjia Norman--and you'll see this document--said, "Well, we want more conditions. We want more outs in this deal," and Emil Fung, from Wharf, comes back to her and says, "No more conditions. This thing has to be unconditional. You're in. Dilution is your protection." So, UIH commits its troops, and it commits itself to Wharf's project.

Now, what else did UIH do during this period of time? Now it's got a right to invest in a project that doesn't have great capital requirements right now because they don't even have the license yet, but it will have capital requirements, and, eventually, UIH is going to have to come up with $40-60 million U.S., but now it has the right to invest in hand, and so, what does UIH do?

UIH goes to the banks. In August, 1992, Mr. Hudon, who will come in here and testify before you, prepared up a document, an investment document that he planned on taking to the banks to show the banks and talk to them about the investment in Hong Kong, raise the money from the banks, and show them that they had--that UIH had the right. This document, August 20, 1992, prepared by Mr. Hudon.

"UIH Asia Investment Company has the option to acquire a 10 per cent interest in Wharf Cable, a consortium bidding for the cable license to serve Hong Kong." Given the way the dilution provision worked, that's exactly what UIH had at this point in time, and this is exactly what Mr. Hudon took to the banks to try to raise the money for the investment, but it's even more significant than that.

He didn't just go to the banks. He first went to Wharf. He first went to Mr. Ng and Mr. Fung, and he showed them this document, and we got this document from their files. He showed them this document, and he said, " This is what we're

going to tell the banks." In fact, he did it on the day before he was going to talk to Merrill Lynch. They said, "Go for it; go for it." So, he went for it, and Mr. Hudon went out and started raising the money to fund this investment right.

APPENDIX M

Excerpt from Plaintiffs' Opening Statement
February 19, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2198:12-2200:16; Transcript 235:12-237:16)

Excerpt from Plaintiffs' Opening Statement
February 19, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2198:12-2200:16; Transcript 235:12-237:16)

Now, I'm going to jump ahead for a second, because I want to show you that, nevertheless, knowing all of this, knowing what UIH's requirements were, Wharf picked UIH to be its strategic partner for purposes of the bid and winning this franchise application, and I'm going to show you, in September of 1992, jumping ahead a little bit on our time line here--and this is right before the bid now--okay, we're up to September, 1992, shortly before the bid goes in, Wharf has a presentation to the WCIL board about what the bid is going to look like, and, at this time, here's what Wharf says, and this kind of sums up my point number three:

First of all, "UIH will be a 10 per cent equity partner and interested in more." Now, let me stop there for a second, because you're going to see this as a constant theme throughout the case. UIH was constantly interested in being able to purchase more. They wanted to buy up to as much as 20 per cent. Wharf always balked, and the floor was always 10 per cent. UIH was at 10 per cent, trying to negotiate for more, so it's a constant theme that runs through.

Now, remember, UIH isn't asking them to give them 20 per cent. UIH is asking to be able to buy in at 20 per cent, and you'll see that as a constant theme.

What you'll also see as a constant theme is the floor of 10 per cent never changes. They're negotiating to go up, possibly, but the floor never goes away. That 10 per cent promise had to be there before UIH would commit its troops to this venture.

So, here you've got UIH in for 10 per cent, not a balance sheet company--and this goes to what I was just saying a moment ago. They knew UIH does not have a strong balance sheet. It doesn't have millions and millions in the bank.

Default provisions. What that means is that UIH would be in the project for its 10 per cent, and that it would fund what was required, the capital funding as they went along with the project. If there came a time that it could not fund, it would be diluted--and this is a concept we'll talk about, and you'll hear it through the witnesses.

This means that they could stop funding, and their interest would decrease below 10 per cent, 9 per cent, 8 per cent, depending on how much they didn't fund, but it would be their option as to whether they wanted to keep funding. That was what this default provision was all about, and I'll show you that more graphically in a moment.

This is on the same document, and this is a concluding statement in the document. "Generally, shareholders defaulting in funding will be diluted." So, UIH would be in for 10 per cent. It would fund its capital contribution. If it got to a point where it couldn't, it would be diluted.

This is what the parties were doing prior to the bid on September 30, 1992. Now, the deal changes slightly after the bid, but I'll get into that, but the principals never change. These principals stay.

APPENDIX N

Excerpt from Plaintiffs' Opening Statement
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2235:10-2237:21; Transcript 272:10-274:21)

Excerpt from Plaintiffs' Opening Statement

February 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2235:10-2237:21; Transcript 272:10-274:21)

Following the bid, UIH will have 180 days within which to exercise an option to come into the project, following the bid--license application, I mean, following the license award, whenever that may be--and they don't know at this particular time. Following license award, UIH will have 180 days to exercise an option to come into the project.

Now, Ng says, "Okay, but if you exercise, you have to be able to show that you have the funding capability for 18 months of this project; that we will look at a business plan and see how much is going to be required for 18 months, and if you exercise the option within six months of license award, you have to show us that you would be capable of funding for 18 months."

Elsner says, "That's fair. That's fine." They also agree--they agree, as they have agreed before, and they agreed since the summer that everything UIH was putting into the project at this point in time in terms of manpower, resources, et cetera, would be credited towards their capital commitment to the project, and they also agreed that it would be 10 per cent.

That was UIH's deal, 10 per cent, and they also agreed that the price for this 10 per cent would be what is called straight up, and straight up meant that whatever the capital contribution costs were going to be, based upon a business plan, if it was $100 million, UIH was going to have to pay $10 million. If it was a billion dollars, UIH was going to have to pay $100 million, and this, of course, is over time as the capital was needed for the project.

But straight up meant that they would be sharing pro rata, dollar-for-dollar with Wharf. Wharf puts in 90 cents, UIH puts in a dime, and that was the deal, and the parties agreed on it, and the parties shook hands on it.

Now, they didn't write it down. They didn't write it down, and I'll tell you why. First of all, Ng needs this commitment right now. He needs UIH to commit much heavier commitment than had been committed up to this point in time so he can implement the system. There's no time to fool around with lawyers at this point in time, but, there is documentation already in progress, and this is documentation where Wharf is still trying to do a three-way deal with UIH and NYNEX, still trying to wrap NYNEX into this thing.

So, there's nothing to document at this point in time. We've got the options. Let's just put it in the three-way deal that we're doing with UIH, Wharf, and NYNEX, let Fries take care of it with Fung. Let the lawyers write it up. We've got a deal. We'll sign it up. It's all done, fine ; beautiful, let's go forward, and they shake hands on the deal, and Bill Elsner trusts Mr. Ng to follow through on his promise and get that thing signed up.

Well, he didn't get it signed up. Two months later, NYNEX decides it doesn't want to do the deal anymore, so it leaves, so the parties start with two-party documentation, just Wharf and UIH, and for some reason, through the course of the spring and through the course of the summer and the winter--spring and summer of 1993, Wharf always finds another reason why it can't sign this thing up, and it finds a lot of reasons why it can't sign this thing up as it gets close to June 1, 1993, and as it gets its license awarded, and as it has its system implemented, and when that happens, it just doesn't need UIH's signature anymore, and it just doesn't need an

agreement anymore, and it doesn't need to promise UIH its 10 per cent anymore.

APPENDIX O

Excerpt from Cross-Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2467:19-2469:08; Transcript 504:19-506:08)

Excerpt from Cross-Examination of W. Elsner

February 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2467:19-2469:08; Transcript 504:19-506:08)

Q Now, as of the time of the October 8, 1992 meeting with Mr. Ng, I'm correct, am I not, that UIH had not committed to the Wharf project. Is that correct?

A UIH intended to commit to the Wharf project prior to franchise bid. We were going to be an investor and be listed as an owner in that franchise application. That was changed at Wharf's request to change the nature of that relationship. As I described this morning, because of their concern about NYNEX, they wanted to be the sole listed owner at that point in time. So, no, we had not been able to commit at that point in time.

Q In fact, you hadn't even gone to your board of directors to get any approval to do so; had you?

A I canceled that. I did not have that happen just because of that change.

Q So, when you had the meeting with Mr. Ng on October 8 of 1992, he was committing, according to you, and you were committing your troops, but you weren't committing for $30 million to $50 million at that point; were you?

A No, we had the right to do that, but we did not obligate ourselves because, as I said, I wasn't going to obligate UIH to something I didn't know for sure it had the money to do. And, we were planning on doing a financing for that.

Q As I understand it according to your testimony, it wasn't until some time around July of 1993, whatever that is, eight or nine months later, that you finally got that financing?

A A portion of it was secured in April and the remaining portion was secured in July.

Q But, I'm correct that you didn't have all the money that you needed until July of 1993?

A That's correct.

Q So, during that time period, you could have backed out at any time. Is that correct?

A That's correct. We couldn't have backed out from committing our people to it. We promised him that and that's what we gave and we got the option in return. The time period on the option didn't even start until license award. So, that wasn't a time period that we had to make that decision.

APPENDIX P

Excerpt from Direct Examination of W. Elsner

February 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2376-2399; Transcript 413-436)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2376-2399; Transcript 413-436)

going to have to apologize in advance.

But let me take it in steps. It talks about the status of the Wharf Cable project, and it says: "UIH has been selected as Wharf's strategic cable partner in its bid for the Hong Kong pay TV license. NYNEX will participate as the telecommunications partner. UIH ownership, 15 per cent, board and executive committee participation, management support. UIH team is in Hong Kong directly participating in all aspects of business plan development and franchise application preparation.

"Do you see that?

A Yes, I do.

Q Now, first, explain to me the 15 per cent. How does that happen?

A Well, we had repeatedly tried to own more than 10 per cent. The 15 per cent was probably what we had targeted at that point.

Q Were you talking within a range at that point in time?

MR. JENTES: Object, Your Honor; leading.

THE COURT: Sustained.

MR. CHASE: Okay.

Q (by Mr. Chase) Let me ask you about the third bullet there, Mr. Elsner, where it says: "UIH team is in Hong Kong directly participating in all aspects of business plan development and franchise application preparation." Do you see that?

A Yes, I do.

Q And could you explain that, please?

A Well, we had a lot of our people working to try to put together bid documents and the business plan that would go in as a part of that bid document, so we were devoting an awful lot of our human resources into that project.

Q And once you were devoting your human resources, did you have an understanding as to whether Wharf would have outs from its commitment?

A No, I didn't believe that they had outs.

Q Why not?

A They had told us that we were going to be a partner in that project, and that we would be listed as an owner in the franchise application, so that was the basis we were working under.

Q And did--

MR. JENTES: Excuse me, Your Honor. I hate to interrupt on these things, but he's just testified that supposedly he was told that. There's no foundation that I've heard so far that he was told that by anybody, and I object to him just picking these things out of nowhere and saying that.

I recognize what Your Honor has indicated, but I think we should have more foundation for where he's hearing these things and what is the basis for his statements.

THE COURT: Those can be brought out in cross-examination. The objection's overruled.

Q (by Mr. Chase) I'll ask one more question, though, Mr. Elsner. Was that the basis on which you committed your people to go to Hong Kong?

A Yes, it was--you mean, by the basis, meaning that we fully intended to be an owner of the project, yes.

Q And what was your understanding with respect to whether you had that right at that time?

A That we were an owner of the project, and would be listed as such in the franchise bid.

Q All right. Now, what were you going to do to pay for this? How were you going to buy into the thing?

A We had the understanding that the cost of the services that we were providing, the out of pockets, and the cost of the time of those people would be--we'd receive credit for that, or it'd be just like spending money, or paying money into the company to fund a portion of your equity contribution, so that was one part of it.

And we intended to start, like with other projects, by using money that UIH had at that point to start the equity investment, but we expected that we would do a project financing to fund the balance of what we needed.

Q What kind of protection did you have in the event that you were unable to fund the balance at this time?

A We--if we got the call, the way you might a cash call, or, you know, time to put in money or whatever, and we couldn't do it, or didn't do it, decided not to, what would happen to us is that we would be diluted; that it wasn't a binding obligation that we had to fund whatever was asked, but if we didn't fund, standard dilution provisions would rule.

Q Could you explain that, please; standard dilution provisions, and what you meant by that?

A If you have paid a certain portion of the money in for an ownership interest, but you can't keep up with what you have to keep funding, you didn't lose the value of what you had paid so far, you just didn't own as much. So, say we--our right is 10 per cent, and you're keeping up with your requirements until, you know, while half the money goes in, but then, for whatever reason, you can't continue to keep up, or you don't continue to keep up, then the other party would put the money in and your interest wouldn't stay at 10 per cent. In that case, where half of the money was in, your interest would end up at 5 per cent at the time the project was done.

So, you don't lose what you've paid for, but you don't own as much as you would have had you kept up.

Q All right. And so, I suppose what you're saying, how does that relate to having an option, let's say?

A It's almost an option at each time the capital's needed. It's a lot comparable, except that you don't have--I think of an option as you exercise and say you're going to do the whole thing; whereas, dilution means that you're going part way. It's still optional whether you keep up.

Q All right. Let me show you a document here, Exhibit 369. It's in the jury book.

(Pause.)

Q (by Mr. Chase) 369 in the jury book. This is a document that--excuse me a second.

(Pause.)

Q (by Mr. Chase) Well, I thought it was on my screen in here.

Let me ask you to look at 369, and it is in the jury book, and this is a--tell us what this document is, please.

A It's a background piece, or a memorandum to describe UIH Asia and the fund raising that we envisioned we would do for projects in that region.

Q Now, on the page entitled, "Hong Kong," and it's stamped at the bottom, 00440, it says: "Hong Kong. UIH Asia Investment Company has the option to acquire a 10 per cent interest in Wharf Cable." Do you see that?

A I'm just getting there. (Pause.) Yes, I see it.

Q Now, how does that relate in August, '92, to this dilution principle that you just described?

A We had the right to be an investor. It's a different way to say it, I would think.

Q Yeah. Explain that.

A See, I use some terms interchangeably, and maybe that's--I'm not trying to be legally precise, but, you know, to me, I guess the word I would have used most often would have been the right to invest. That's what we really had.

And, it was an option, sure. We had--we weren't firmly bound to do it, but we certainly had that right, so, you know, it could be characterized as an option.

Q All right, and is that also how you would characterize the dilution?

A Yes.

Q All right. Now, let me take you forward now. Let me ask you about October 8th, 1992, okay?

A Okay.

Q I'm going to take you to my time line here for a second, if I can find my trusty pointer, and we've got that up on the time line.

Do you remember a meeting on October 8th, 1992, in your offices in Denver with Mr. Stephen Ng?

A Yes, I do.

Q And you were in attendance at that meeting?

A Yes, I was.

Q All right. So, what we're going to hear from you now is your own personal knowledge; is that correct?

A That's correct.

Q Now, tell us, if you will, a little bit of background. How is it you happened to having a meeting on October 8th, 1992?

A We--it was--the timing, why it was that date was that we had been putting a lot of effort into doing the initial screening for personnel that we were proposing that Stephen hire into Wharf Cable, so we had lined up a number of interviews for him that were to take place in Denver, and that's why Stephen was in Denver at that point in time.

Q Okay. Were there any particular things that you needed to talk to him about on October 8th?

A Yes, there were.

Q Could you tell us about that, please?

A I'll--I guess I'll start with a little bit of--back up a little bit.

We--up until about the time--and I don't know exactly how you--what your question is. The--

Q Well, I'll ask it differently. As of October 8th, did you have any concerns about your relationship with Wharf?

A We did.

Q All right. Tell me about that.

A Okay. We were very comfortable in the time that we were putting all of the effort into helping to put together the initial business plan and the bid documents that we were going to be an investor at the time that that franchise application went in, and that's--that was our mind set through that August-September kind of time frame of 1992.

What happened is that NYNEX, as I understood--this is what I was told now. NYNEX told Wharf that they would not be able to secure their board approval prior to that date, so weren't sure that they would be an investor, and so, right at the end of the process, just before the franchise application went in, Wharf decided that it was best to list itself as the sole owner, but that it still needed the expertise to demonstrate so that what they wanted us to do was to be there for the expertise, and that we would still get our right to invest, but we wouldn't be listed as an owner at the time the franchise bid went in.

Q All right. Now, just to clarify, this is what you understood in your role as chief executive officer; right?

A That's correct.

Q And you were told this by people within your company?

A That's correct.

Q All right. And this is--is this a concern that you had on October 8th?

A Yes, very significant concern.

Q All right. Tell me why it became a concern.

A Well, first of all, the fact that we were going to be an owner and shown as such in the franchise application, that was the understanding from the time that we really started putting our people and getting them involved--into Hong Kong on a very active basis, trying to help with this project.

When, all of a sudden, you're not going to be an owner then, that wasn't what we--that wasn't the deal, so, I mean, that was something different, and so, I didn't like that, and then, in

addition to that, when you looked at--it was a part out of a, I think out of the bid document. The way it was described was very noncommittal, put it that way, where--

Q The way what was described?

A UIH's right to invest was described as, I think, may be offered, as opposed to we were--we had the right to invest. I mean, I expected it to say, "UIH has the right to invest subsequent to," you know, the time of this application, but it said--it used very soft wording.

Q Do you remember being surprised at the language when you saw it in the bid application?

A Yes, I was surprised.

Q And did you see this before or after the bid application was submitted?

A After.

Q All right, and so, did you have any other concerns at the time of October 8th?

A We were continuing to do what we had done earlier to support the project. We were spending an awful--putting an awful lot of our resources to bear on this project, and, you know, that was not something that we were going to continue to do if we weren't--if we didn't have this buttoned up.

Q All right. Now, you mentioned NYNEX; right?

A I did.

Q Okay. Tell us a little bit about who is NYNEX, and what you understood they were doing here.

A NYNEX is one of the regional Bell operating companies, like a US West here in Denver, and they have a significant amount of telephone expertise, and they, as I understood it, were offered a role as a strategic partner, as well.

Q Okay. Now, did your company have the ability to be providing services without some assurance of a right to invest?

A We wouldn't have.

Q Now, it's been mentioned that--in opening statement by Mr. Jentes, and I assume he's going to try to prove this, that NYNEX would give it away. Could UIH give it away?

A No. We didn't have that kind of wherewithal.

Q Tell me about what it meant to your company, diverting your attentions to Hong Kong, and what it meant in terms of other opportunities.

A Well, what we were doing is taking a significant number of our people and having them work on this project, which meant that, you know, it was a limited commodity. We--I don't know exactly the number of people in the company at the time. It was, you know, probably in the 50 or 60 kind of a number, but not that many of them were free to do things like a project like this.

We had people that were working in Norway, people that were working in Sweden and other, you know, had specific responsibilities, and we had people that were doing more, you know, defined tasks, like paying payroll, and paying bills and things, so the people that had cable television expertise that you

could devote to a project like this weren't that many, and we took a significant component of that group and put them to this project.

Q Now, who is Mr. Dave D'Ottavio?

A Dave D'Ottavio is--well, at that time, he was the chief operating officer of UIH. He was somebody that had significant experience running large regional groups and large cable television systems for other companies, primarily COMCAS, which is a very, you know, one of the top five cable companies in the U. S.

Q As of October 8th, had he expressed concerns to you about how much commitment UIH had put into this project?

A Yes, he had.

Q What did he tell you?

A Well, he was bothered by the fact that--the same thing I was. I mean, we were putting all these resources to bear on something that--the franchise wording was soft, and he didn't want to keep taking those resources away from other things he was trying to get accomplished. He had responsibility for operations throughout our company. He wanted those resources for other projects if this wasn't going to be something that we had an absolute right in.

Q All right. Now, so Mr. Ng comes to Denver on October 8th and comes to your offices in Denver; right?

A Yes.

Q Tell us a little bit about how the day went.

A We began with kind of a, oh, I'd say it's a "Hi, how are you?", you know, cordial kind of a luncheon. We had a board room in our offices, and it was--there were a lot of people at the lunch, you know. Most of our senior people that were in town that day would have participated, and, primarily, Gene Schneider, who, you know, he was the senior, you know, prestigious person in our company, so with Stephen coming into town, he would have more or less hosted the luncheon, and it was very pleasant.

It was more, you know, "How are things going there?", and I think, as I recall, Stephen was very polite, very pleasant, very cordial. He gave Gene a copy of--a set of books on Hong Kong that--I think mostly what he had in there was he was giving the people that he was interviewing, he was trying to entice the, you know, or convince that this was a good opportunity, and he was giving them as a background, but he gave Gene a set of the books as well, and it was a--just a general luncheon.

Q Okay.

A No specific agenda at that lunch.

Q Did you have an opportunity during that day to have a meeting with Mr. Ng on specific business issues?

A Yes. After the lunch, then, there's a small conference room that's adjacent to my office, and we went there and had a small meeting where we discussed real business, not a pleasantries kind of meeting.

Q Okay. Let me slow you down for a second. Now, first of all, you say--so you went to a different location within the offices; right?

A That's correct.

Q All right. Let me just get the jury situated, because I think we have a picture of that, so we can get a feel for it. If I could ask you to come down here for a moment, please, and help me narrate this.

(Pause.)

Q (by Mr. Chase) First of all, let me hand you what's been marked as Exhibit 1600-B, and ask if you could tell us what this is?

A Are you going to hold it?

Q Yeah.

A This is the large--this is kind of where you'd come into the company's offices. This is the reception desk, and then immediately after coming in, there's--this is a board table, and it's the large board room that we have. That's a picture of Gene at the end of it that the board gave to him as a gift way back in the United Cable days, but no other significance to that, I guess.

Q All right. That would be--was that where you had your initial session with everybody involved?

A Yes.

Q Okay.

MR. CHASE: Move the admission of Exhibit 1600-B, Your Honor.

MR. JENTES: No objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit 1600-B was received in evidence.)

MR. JENTES: But I don't seem to have copies of those in these books.

Q (by Mr. Chase) All right. Now let me hand you 1600-C and ask if you could tell me what that is, please?

A Well, this is where my assistant sat, and this is the small--the door to my office, and the door into this conference room kind of butt up against each other, so this is the small conference room where we had the meeting.

MR. CHASE: All right. Move the admission of 1600-C, Your Honor.

MR. JENTES: No objection.

THE COURT: It's admitted.

(Plaintiff's Exhibit 1600-C was received in evidence.)

MR. CHASE: And we do have copies that we could give to the jury that they could put in their book, but we can do that, I suppose.

THE COURT: Well, I think as long as you're looking at it, we might as well have Mr. Gilmore give them to them.

MR. CHASE: Let's do it now, then; distribute B and C. Thanks.

(Pause.)

Q (by Mr. Chase) All right. Now, we've got you in the conference room here. Who do we have in the conference room? Who's there?

A There was--Stephen was there, then Mark Schneider and I were there for the whole time, and Mike Fries was there for portions of it.

Q Now, let me ask, first of all, you expressed concerns that you had. You told us about those. Did Mr. Ng have anything that he wanted?

A Yes. Stephen--this was a very, I mean, this is a big task, to pull together what it takes to get a business like this up and going on an expedited basis, and Stephen was in need of all, or of help, and what he--

MR. CHASE: Excuse me, Mr. Elsner. He's got an objection.

MR. JENTES: I think if we're now going to get into something that Mr. Stephen Ng said, he ought to say what his best recollection is of Mr. Ng's statements.

THE COURT: Yes. The objection's sustained.

Q (by Mr. Chase) Mr. Elsner, do you understand? Report as best you can what was said to you in the course of this.

A Stephen asked us if we would take individuals at UIH and give them to him to take active roles in the Wharf Cable business until such time as he was able to hire permanent people in those roles.

He asked us if we would take Bill Pittman, who was our senior person in the region, who had significant--now, he didn't

say he had significant cable--but Bill was a senior cable television operating person.

Q So you're adding that?

A I'm adding that.

Q Right; okay.

A But Stephen said would we take Bill Pittman and put him in as acting chief operating officer of Wharf Cable; would we take Blake Williams and put him in as the chief technical--chief engineer of Wharf Cable; and take Steve Moss and put him in as an analytical and financial planning person into Wharf Cable until such time as they could hire permanent people in those positions.

Q Okay. Was he asking for anything else?

A A continuation of everything that UIH had been doing to that point, and those were--most noteworthy were trying to find the right people and doing the first screening interviews, and making sure people--we would recommend before he had to get involved to interview them; to use our vendor contacts to try to help bring the right vendors to the table, plus help negotiate the best terms based on our historical contacts with vendors, and knowledge in the industry.

We were helping with system design and concept. We were helping with securing management information systems, so there was a lot that was going on that he wanted us to continue to do as we had been, but, in addition, he wanted those three people to be in his project, not to be just doing general service for UIH.

Q All right. Now, did he express this to you?

A Yes, he did.

Q Who was the spokesman from your group? You said that you, Mr. Schneider, and Mr. Fries were in the office. Did you all three talk?

A Oh, we all three said different things, but the reason that we did it as a small group is here was the top guy from Wharf working on this, and he--we didn't want to have, you know, the real down-to-earth, you know, business discussion in a broad room full of our people. I wanted it to be something that he and I, as me, the top person in UIH, and him, the top person for Wharf, we had a direct understanding, so we--Stephen and I were the primary people in that discussion. Mark said things. Mike Fries said things, but the, you know, I'd say Stephen and I had the most significant dialogue.

Q All right. What was your response to Mr. Ng's request?

A That we would continue to support Wharf Cable as we had been. We would--and we used the word "secunded," which, it's--I don't know where the word comes from, but what I understand it to be, you loan somebody into a--so somebody works for you still, but you take them and you loan them to somebody else for their, you know, for their benefit for a--only for a period of time.

So, we would "secund" those three individuals that I named--Bill Pittman, Blake Williams, and Steve Moss--and--but what we had to have in return was that our investment right had to be absolutely firm, so there could be no misunderstanding to that.

Q Okay. Now, let me stop you for a second. Were all three of you in the room while this discussion was going on; all three of the UIH representatives, you, Schneider, and Mr. Fries?

A I don't know that Mike Fries was in for all of it. Mark Schneider and I absolutely were.

Q Okay, and you remember Mr. Fries leaving at some point?

A Yes.

Q All right. So you told Mr. Ng that you needed an absolute clear investment right. What was his response?

A Well--and there was more to it than that. It had to be something that we could work with, or that worked for UIH, so we outlined what that would be. It wasn't just that, you know, this, you know, vague thing.

Remember, UIH didn't have the money, and we knew we didn't have the money, and Wharf knew that we didn't have the money, so there was never any misunderstanding about that, so, to me, the most important thing was to know what we had a right to buy, what the price was, and how much time we had to be able to come up with the funding for that.

So, those were the three--what we said is we had an absolute right to buy 10 per cent, to own 10 per cent of the project; that it was at the same price that Wharf paid for a percentage, so that there was no markup to us, and no markup to them. Neither side promoted the other side; and that we would have the time to do it, and what--how that was defined is we could invest, but what we had to show Wharf was that we had enough money--we had to demonstrate that we had enough money to fund the first 18 months of the equity requirement of the project, and we had six months to come up with that money, or to be able to demonstrate that we had that money from the time of the award of the license.

So--and we still got, you know, we were putting all of these additional people into the project, or having them spend more time on it, put it that way. We still got credit for those services as part of the cost of our equity, so we still had the, you know, you take the cost of those services, and that would be part of our cost of buying our equity, so you still had that credit there.

But we had the price, which was the non-marked up price, the 10 per cent was firm, and having six months from franchise award to prove or demonstrate that we had enough money to pay the first 18 months of what it would take for us. That was what we said we needed, and that's what he agreed, and that's the basis that we started--well, we did what he asked us to do.

Q Okay. Let me now back up for one second. Now, with respect to the 18 months, was that one of your requirements, or his requirements?

A That was his requirement.

Q Now, tell me how that plays into the discussion. How did that work?

A Well, we--it was known, as I said, that we didn't have the money, and he didn't want a partner that couldn't stay with the project, and is it--does--it didn't make sense that you'd have all the money that the project could ever need, but going through 18 months of it was an awfully significant component of it, so that was what was acceptable to him.

Q All right. So, let me take it a term at a time and make sure I understand it.

With respect to the time within which you'd have to exercise your option as to whether you'd be in or not, how much time?

MR. JENTES: Asked and answered, Your Honor.

THE COURT: Overruled.

THE WITNESS: Six months from the award of the license.

Q (by Mr. Chase) All right, and just so we understand how that works, if the license is awarded and you don't do anything within six months, what happens to your right?

A We've lost it.

Q All right, and then if you do do it within six months, what do you have to show with respect to funding capacity?

A We had to show them that we had enough money to cover the equity requirements for the business for the first 18 months.

Q And if you couldn't do that to their reasonable satisfaction, what happened to your right?

A It went away.

Q Okay, and with respect to the out of pocket costs and the other kind of expenses and employment costs you'd incur in helping them with the implementation, what would happen with that?

A Easiest to describe it as that's--if we didn't exercise?

Q If you did exercise.

A If we did exercise, look at it as part payment. I mean, you've already put in part of the money that you had to by the cost of those services.

Q And if you didn't exercise, what would happen to your costs that you've come out of pocket?

A I don't think we ever addressed it. I don't think we ever had that discussion.

Q So, without having it, what would have happened to your money if you didn't exercise?

A We'd have lost the money.

Q Okay. Now, how long did this discussion take; not the whole discussion in the conference room, but the focus on your option right?

A Oh, it's probably fifteen minutes to a half hour of time spent specifically making sure we were clear on that.

Q Was it a back-and-forth, or were you just sitting there telling him terms, or how did it work?

A It was back-and-forth, to come up with something that worked for both sides.

Q Did he indicate to you that there was any qualification on his authority or ability to commit to this?

A No, he didn't.

Q Did he give you any indication that he'd have to take your proposal back to somebody else or some board and see if it would be acceptable?

A No, he didn't.

Q Now, did you, on that day, commit to him that you would do what he wanted your company to do?

A Yes, we did.

Q And did you, in fact, commit on that day?

A Yes, I did.

Q Now, if he had told you that he didn't have the authority, that he had to go to someone else, would you have committed the company?

MR. JENTES: Object; speculation.

THE COURT: Overruled.

THE WITNESS: I would not have committed the company.

Q (by Mr. Chase) Okay. Now, at the time you had this discussion, you were all aware of NYNEX; right?

A Yes.

Q And did you have any discussion about NYNEX in this discussion?

A Stephen asked whether it would be a problem for us if NYNEX wasn't a part of it. That's the only time that NYNEX ever came up in my discussions with Stephen.

Q Was it a problem for UIH if NYNEX wasn't going to be part of the deal?

A No, it was not.

Q In that conversation, did Mr. Ng tell you that there could be no investment for UIH unless NYNEX invested?

A No, he did not.

Q Did he ever tell you that?

A No, he did not.

Q Now, I want to show you something.

(Pause.)

MR. CHASE: I've been technologically outwitted again.

Q (by Mr. Chase) Let me ask you to look at this portion of Mr. Ng's deposition--and I think I'm going to get the right portion here--and then I'm going to ask you a question about it.

(Whereupon, a portion of the videotaped deposition of STEPHEN NG was played.)

MR. CHASE: Let me try to get the volume up so we get this going correctly. I did find the right thing.

(Whereupon, playing of the videotaped deposition was continued.)

MR. CHASE: Does everybody--could I ask if the jury was able to hear that, Your Honor?

APPENDIX Q

Excerpt from Direct Examination of W. Elsner

February 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2443-2447; Transcript 480-484)

Excerpt from Direct Examination of W. Elsner
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(Aplt. App. 2443-2447; Transcript 480-484)

our board what was going on with it.

Q Well, what did you understand specifically during that period of time, what was your understanding as to what was going on, and what involvement did you have?

A We started to hear some disturbing things about--new things to us, you know, like Wharf needing board approval and all of a sudden, there were hedges on our right to invest or conditions that we had never known about or ever dealt with before. And as far as my direct involvement, is in December, I flew out to Los Angeles where there was a cable television convention--

Q Let me stop you for a second because I want to make sure we get the time squared away here. We're now talking about the period between October, '93 and December, '93; right?

A Right.

Q And the license now has been awarded on June, '93; right?

A Right.

Q So we're in this period of time, I guess the red period of time on my timeline; right?

A Right.

Q Okay. Now, you heard these things I guess that you described a moment ago from others in your company; is that right?

A That's right.

Q And that would be Mr. Schneider, Mr. Fries?

A Mostly Mark Schneider.

Q And what did you personally do then?

A We arranged to have dinner with Stephen in Los Angeles, because as I understand it, he was attending that cable show, convention, whatever you call it, out there at the time, so we arranged to have a meeting with him just to get to the bottom of it, or find out what was going on.

Q Okay. And you had dinner with Mr. Ng?

A Mark Schneider and I both had dinner with Mr. Ng, yes.

Q Can you tell me about the conversation, please, of trying to get to the bottom of what's going on?

A It was as always very pleasant. We--you know, it was a nice restaurant, it was, you know, a nice place to be. They had I remember some antique Harley Davidson's catching my eye. It was a nice place for us to get together, a good situation, and we sat down just the three of us to dinner and talked about what was going on with the project and lot of different things. But the real intent was this--we should have wrapped up getting this investment made a long time ago. Now we're hearing that you need board approval, and what's going on. I mean, it was--this was all kind of hitting us and how do we deal with it. We didn't have any idea what really the circumstance or what was--

what the issues were, so this was an opportunity to try to find out.

Q What did Mr. Ng say?

A Stephen said that--well, he was comforting. It was don't worry, this is just something that I have to get done. I have to take this to my board. Help me out with this. That was the flavor of what he said.

Q Well, did he acknowledge to you that this was some change from your original deal?

MR. JENTES: Object; leading.

THE COURT: Sustained.

Q (by Mr. Chase) Did he say to you anything that would indicate something new was happening?

A He--clearly, he knew that's something that we had not reckoned with before, and so this was the first time I knew that he was going to go to his board to get this approved. I didn't know that there was an issue like that all along and he knew I didn't know that there was an issue about that. And so clearly, this was something new.

Q How do you know he knew you knew there wasn't such an issue?

A He knew that I--I mean, we had never discussed it. We made a deal. It never came up as a topic of conversation in any of the prior things, including the call I made to him after we had all the money. Now this was something the first time we'd discussed it. So, yeah, he knew that I hadn't dealt with that before.

Q Now, were you aware through discussions with others in your company that he was raising this issue in the fall?

A Yes.

Q Okay. So when you went to Los Angeles--

A And that was really the reason for the meeting.

Q Okay. Did he acknowledge your investment right?

A Like I said, it was don't worry about this, just help me out with this. I'm supportive. What I need to do is show my board what value you're going to have going forward, what kinds of things you can do for us.

Q In the future?

A Right. And give me a hand doing that. And, you know, to me that was--that was a pretty outlandish way to approach it. It was absolutely clear that we had the right on October 8th of '92, more than a year earlier, we had done everything we were supposed to in that bargain, and now he's asking us to show future benefit or something. I mean, it was just a different--it was an out of line kind of concept.

Q Did you tell him that?

A Yes. And he didn't argue with that. He didn't say oh, no, you never had the right or you never--that wasn't the deal or anything. It was more a help me out with this. I've got to get this done.

Q All right. Did you leave that with any kind of understanding that everything was going to get worked out?

A Mark offered to provide some ideas on futuristic--or not futuristic, but future services that we could participate with them in like interactive services or pay per view services or different kinds of cable television, newer kinds of services, because we were, you know, very involved in a lot of projects and saw what was being developed in the industry.

So Mark agreed that he would try to put some kinds of ideas together. So, yeah, we tried to be accommodating, but in no way did we ever concede or ever dream that we didn't already have the investment right. So we were trying to help out, and Stephen said that he was going to arrange a board meeting that we should do a presentation at. And we agreed to participate in that.

Q Did you have an understanding that your investment right would depend on how well you did at that presentation?

A Not then. I was still convinced that Wharf was going to be good for their word and our right was still secure. I mean, I didn't realize how much risk we had at that point.

Q Have you ever heard of a thing called the Smith Barney Conference?

A Yes.

Q What is that?

A It's a--well, the one you're talking about is one that I participated in for United Cable, and that UIH participated

APPENDIX R

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2450-2454; Transcript 487-491)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2450-2454; Transcript 487-491)

you know, staying away from it.

Q All right. Now, Mr. Ng told you at your dinner in Los Angeles that he'd arranged for a meeting between you and the board; right?

A He said he was going to. He hadn't arranged it at the time we had that dinner.

Q Did you go to Hong Kong and meet with board members of Wharf?

A Yes, I did.

Q When was that?

A In March of '94.

Q Do you know whether you were meeting with the entire Wharf board or part of it?

A Well, I've learned after the fact through some of what's going on here that it wasn't the whole Wharf board or--I mean, we were told that it would be helpful for us to give a presentation to the Wharf board, and I assumed that was the Wharf board. I didn't know to ask whether it was part of it or all of it or anything like that.

Q Do you remember roughly how many people were in the room you were talking to?

A Probably--other than Mark Schneider and myself and Stephen, probably six to eight.

Q Now, this was--do you remember the date?

A It was in March. I don't know which exact date.

Q Okay. You and Mr. Schneider went there; right?

A Yes.

Q Did you discuss the meeting or what was going to happen with Mr. Ng prior to the time of the meeting?

A Well, we had discussed it some in Los Angeles of what the intent of the meeting was, is for us to give a presentation on UIH, and Stephen was encouraging us to try to talk about future benefit as well. And then we had dinner with Stephen and the fellow that he hired, Mr. Keefe, was the replacement for Bill Pittman as the permanent chief operating officer of Wharf Cable. Stephen and David Keefe had dinner with us the night before that meeting with his board.

Q Did he tell you he'd support you?

A Yes.

Q Did he recommend it?

A He said yes, he had.

Q And at this time, did you still believe you had an investment right?

A Yes.

Q And the next day when you met with these board members, what did you tell them?

A We gave them the background of UIH. We gave them the history of what we had done in Hong Kong. We told them that we were very pleased that we had this right to invest and we were glad to be partners with them in this project.

Q Did you talk to them about what you had done since August, 1992?

A Yes, we did. We laid out what--that we had the right to invest and that we were partners and this is what we had done on their behalf.

Q Did any of the directors say anything to you?

A They asked some questions.

Q Anything about your right to invest?

A No.

Q How long did you have your discussion with the directors?

A It was probably a little less than two hours.

Q What happened after that?

A Stephen asked us--said that he wanted to meet with the board privately, that let him know where we could be reached, so we told him we would just go back to the hotel and have lunch there so that he could call the hotel and get us, and that he would give us a call after he had had his private meeting with the board.

Q Did he get in touch with you?

A Yeah, he called us probably a couple hours after the end of the previous meeting and asked us to come and meet with him back at his offices.

Q What did he tell you?

A I can remember these words pretty precisely. It was "The board is not ready to entertain your investment at this time." I mean, that kind of a statement where it was the board isn't ready to have a partner. They didn't approve your investment.

Q What was your reaction?

A Pretty bad. I mean, I don't get ruffled much, but that was outrageous and I couldn't believe it. I--you know, we had been nervous, we had been worried about it, but I couldn't believe they really did that. And, you know, it was--you can't make a deal, have the other side do everything, and then say sorry, go away. You know, it just was--it was outlandish, so I clearly said that.

Q What did Mr. Schneider say?

A Probably the same, with more emotion. It was not a fun meeting. It wasn't something--I mean, I had thought I had a great relationship with Stephen. I thought that, you know, the relationship with the companies was good. I didn't ever have misgivings, but this--you'd just been had and, you know, we were both pretty upset by it.

Q Was Mr. Fung there?

A Yes.

Q Did Mr. Fung say anything?

A No. In fact, very specifically he didn't, because I turned to him and I said, "Emil, do you think this is really right? I mean, can you support this? Is this really fair?" And he wouldn't say a word. He was embarrassed.

Q What did you do after that?

A I'm not sure what we--there wasn't anything we could do. I mean, we just left, went back to the hotel and flew back to Denver.

Q Mr. Elsner, let me ask you to look at Exhibit 1376.

A Okay.

Q 1376 appears to be a March 9, 1994 letter from Mr. Ng to a certain Dean Barrett, and it has attached to it a one page briefing memorandum; is that correct?

A Yes.

Q And that is in the jury book as well. Now, first of all, when you understood you were meeting with directors, directors of what company?

A Wharf Holdings.

Q Okay. Was there any mention that you should be meeting with some other directors, some other Wharf entity?

A No.

Q Now, on the second paragraph of this letter, the last sentence says, "The matter of inviting co-investors has been

under review and I do not have any recommendation for the board to consider at this stage." And this was written by Mr. Ng. Do you see that?

A I don't yet.

Q Okay, it's in the second paragraph on the first page.

APPENDIX S

Excerpt from Direct Examination of W. Elsner

February 20, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2422-2424; Transcript 459-461)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2422-2424 Transcript 459-461)

(Pause.)

Q (by Mr. Chase) Exhibit 531, are you generally familiar with this document?

A Generally is probably a good word; not the details or specifically, but generally familiar, yes.

Q Were you aware on October 8th when you met with Mr. Ng that your company had signed this document?

A Yes, I was.

Q Okay. What did you understand this document was all about?

A I first heard about this document when I received a call from Mike Fries, who is our Senior Vice-president in charge of Development, who was working with Wharf putting the big together, and this was how I first heard that instead of us listed as an owner at that date, we were going to have the right to own, and that Wharf still needed to show that they had the technical and cable television expertise to support their building this business. So this was a document that was supposed to go in the franchise application that proved to the franchising authorities that Wharf had the required cable television expertise to be successful.

Q All right. Now, did you understand that UIH had any commitment under this without being a shareholder?

A No, this was never supposed to rule or be an operative document, stand alone in and of itself. It was supposed to be what we did as an accommodation to them to commit to provide resources so that they could show they had the cable television expertise.

Q All right. For a moment, let me ask you to assume that away and assume that it was fully operative and effective the moment it was signed. According to its terms, when would be the first time UIH would have been obligated to provide any services under this technical cooperation agreement?

A At the time the license was awarded.

Q And that was June 1, 1993?

A Close to there. I mean, I think it was right then.

Q Okay. And I guess maybe this is a dead give away where it says license, 6-93. Is that your memory?

A Yeah, I'd tell you June, whether it was the 1st or the 2nd, I mean, I don't know that I know that date.

Q And the services that you described a few moments ago when you committed your company, for the most part, when were those services provided?

A Immediately after the October 8, 1992 meeting. We, you know, acted on that that day. So those would have started to have been provided on October 8th.

Q So did these services have anything in the world to do with the technical cooperation agreement?

A No.

Q Did the technical cooperation agreement even get mentioned in the context of your meeting with Mr. Ng?

A No, it didn't.

Q Did UIH ever send a bill under the technical cooperation agreement?

A No, it didn't.

Q Did UIH ever get paid under the technical cooperation agreement?

A No, it didn't.

Q To your knowledge, was the technical cooperation agreement ever used for anything?

A It was included, to my knowledge, in the franchise application, but that was the extent of it.

Q Now, let me ask you a few more questions about it.

Who was the technical cooperation between?

A Wharf Cable, Limited and United International Holdings, Inc.

Q All right. Let me show you a chart that I used in my opening statement. I'm going to ask you if you can come over here and use this mike for a moment, and I'm just going to hold this.

All right, so it was between UIH and Wharf Cable, Limited?

A That's correct.

Q All right. Now, were these parties parties to the agreement?

APPENDIX T

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2409-2411; Transcript 446-448)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2409-2411; Transcript 446-448)

Q All right. Let me ask you to look at some language from Mr. Ng's deposition that I'm going to put up on the screen here, and I'm going to ask you about this language.

First of all, have you ever seen Mr. Ng's deposition?

A No, I haven't.

Q Okay. I'm going to ask you about some language you've never seen before.

All right. I'm going to read the question and the answer, and then I'm going to ask you a question:

"At the time when you were receiving these services from UIH, did you believe it was reasonable to conclude that a deal would be concluded between UIH and Wharf and NYNEX whereby UIH would obtain an interest in the Wharf Cable project?" Answer: "Subject to the respective boards approving the transaction and the documentation, and subject to all the parties being reasonable about the terms and conditions, I think there was a fair chance that an investment agreement could be completed eventually."

Have you ever seen that language?

A No, I haven't.

Q On October 8th, 1992, or any time around that period of time, were you ever told by Mr. Ng that there's a fair chance that eventually you may have a deal?

A No, I wasn't.

Q If you'd have been told that, would you have committed your company?

A No, I wouldn't.

Q Let me show you some language from Mr. Woo's deposition. Have you ever seen Mr. Woo's deposition?

A No, I haven't.

Q I'm going to read you a portion on line 7 there. He's answering a question, where he says:

"No. That is something that I have written here for Stephen Ng's information. That was the way we would deal with the matter. We may invite them, because if they have performed well as technical agreement, if they have performed well, I think if they have performed well, that would give us high motivation to invite them, but we are going to be the one that has the overall discretion and judgment to say whether we wish at that time to invite them or not, and whether they have performed to our satisfaction. This has to be absolute, our own discretion."

Do you see that language?

A I see it.

Q Now, on October 8th, or anytime thereabouts, was it ever told to you that it had to be in Wharf's absolute, sole discretion whether you could invest, even after you committed your company?

A I was never told that.

Q Would you have committed your company?

A No, I wouldn't.

Q Let me ask you to look at Exhibit 866 in the book, please. I think we're past what I've got maybe.

MR. CHASE: I guess we need another book, Mr. Gilmore. I don't think this one is in the jury book, so I'm going to run it up on the screen. 866 is? Great.

Q (by Mr. Chase) Are you there?

A Yes.

Q Could you tell us, please, what 866 is?

A The--well, the front page is a--the cover of my copy of the board book that we would have used for a board presentation that was held on--the board meeting being held on December 18, 1992.

Q Let me ask you a quick question about that. It has your name on it, and your name appears on a lot of these board presentations. Does that mean it's your presentation or somebody took it out of your book?

A This is my copy of the book. So each of the board members would have had a label that had their name with their copy of the book. So this wasn't my presentation; it was my copy.

Q I see. So if we copied Mark Schneider's book, it would have had Mark Schneider's name there?

A Right.

APPENDIX U

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2401-2406; Transcript 438-443)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2401-2406; Transcript 438-443)

THE COURT: We'll be in recess.

(10:16 a.m. - Recess accordingly.)

(At 10:36 a.m. on February 20, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(10:36 a.m. - Jury present.)

THE COURT: Go ahead, please.

MR. CHASE: Your Honor, because of a technical issue before the break, is it okay if I replay the predicate to my question?

THE COURT: Yes.

MR. CHASE: Thank you.

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Elsner, I'd like you to watch the video here, and then I'm going to ask you a question.

(Whereupon, a portion of a videotaped deposition of Stephen Ng was played:)

Q (by Mr. Chase) Now, my question: Mr. Elsner, did Mr. Ng ever tell you that UIH's right to invest would depend on what the NYNEX board decided?

A No, he didn't.

Q Now, had Mr. Ng ever told you that UIH's right would depend on what the NYNEX board decided, would you have committed your company?

A No. I mean, we had no influence or control over NYNEX. We wouldn't be dependent on that.

Q Now, at the conclusion of this meeting, did you shake Mr. Ng's hand?

A Yes.

Q Did you believe you had a deal?

A Yes, I did.

Q Did you trust him to honor that deal?

A Yes, I did.

Q Now, did you get the deal documented right then and there?

A No, we didn't.

Q Why not?

A We were--I knew that we were working on documentation. People in UIH and people at Wharf had been working on documentation for some period of time, and that--we agreed

that we'd wrap that up quickly, but we didn't sit and do that there in that room, no.

Q Did you feel like you could trust Mr. Ng to be good for his word if you were committing your troops?

A Yes, I did.

Q Have you ever done that before, deal on a handshake until you can get the documentation taken care of?

A Yes, I have.

Q Give me an example.

A Oh, there are lots of--I think that's the way an awful lot of business gets done. We've--right now, I'm chairman of a board of a company that the reason I'm spending that time is because I will get stock options when we put together a stock option plan. I don't have that documentation, but I'm clearly performing under the understanding that that'll get done. I have no doubt that that's a reasonable approach. I--

MR. CHASE: Excuse me, Mr. Elsner. I think Mr. Jentes wants to object to something.

MR. JENTES: Well, it was nonresponsive to the question. He was supposed to give an example.

THE COURT: I think he just did; overruled.

MR. JENTES: But I was--excuse me.

THE WITNESS: I have used UIH's resources. We had the right to buy the properties, certain of the properties that United Cable had developed prior to the merger of United Cable into

United Artists, and we agreed that we would fund those properties while we were putting the--fund and manage, supervise the management of those properties while we were putting together the financing to be able to complete the purchase of the Israel cable system, so that was done on a handshake. That was not something that got documented.

When we finally bought the interest and had the financing, then we had documentation, but we had expended a lot of money funding that business during that interim period.

The same thing, I negotiated a transaction with TCI where United Cable bought the Lakewood and Golden cable television properties that TCI had, and that, we operated for a long time--we actually took over the supervision and directed those properties, and that was done--we knew we were good for it. It was done on a handshake, so, yeah, I think you'd find that often.

Q (by Mr. Chase) So when you're sitting in your small conference room on October 8th, Mr. Ng says you've got this, and you commit the troops, did you have any reservation that this man was going to be good for his word?

A No, I had no reservation.

Q And were you confident that the documentation would be done in due course?

A Yes, I was.

Q Did Mr. Ng say to you, "Now, look, I need this, but don't give it to me until we've got it all documented out."?

A No.

Q As a matter of fact, was he in a hurry?

A He wanted us to get these people freed up and devoted purely to that project right away, yes.

Q Now--

A I mean, he wasn't in a hurry to leave that day or anything. He was--he wanted us to be expeditious in providing what he needed. I don't know what your question was for "hurry."

Q I didn't mean was he in a hurry to leave your office. I meant was he in a hurry to get from you the services that he was asking for?

A Yes, he was.

Q All right. Now, you say you anticipated the documentation would get done; right?

A That's right.

Q Was this deal between you and Mr. Ng when you shook his hand, was it contingent upon or subject to anything further?

A No, it wasn't.

Q Was it contingent upon or subject to you getting some documentation done?

A No.

Q If it was contingent on that, would you have committed your troops at that time?

A I would have waited until we had what it was contingent on done, and then we would have started.

Q Did you anticipate that in addition to having this option right, you may have an additional agreement that would deal with certain shareholder rights if you exercised the option?

A Sure. I think that's something that's usually done between parties.

Q And did you anticipate something like that would get negotiated and documented?

A Sure.

Q Did you believe, or did you have any reason to believe that your option right that you committed your troops on was contingent upon that happening?

A No, it wasn't contingent on that.

Q If it was contingent on that, what would you have done about committing the resources of your company?

A I would not have committed them.

Q Okay. Now, Mr. Elsner, in that meeting with Mr. Ng, you didn't take notes, and you didn't write any of this down, did you?

A No, I didn't.

Q You remember this discussion clearly?

A Yes, I do.

Q Why?

A It was a big deal. This was something--this was a very significant proportion, the size of the opportunity, the--what we were putting at risk or putting into the project, this was a big deal to a company like UIH, so, yeah, I remember it very distinctly.

Q And did you have any reservations about the fact that they were going to be honest and good for their word, and it would get documented?

APPENDIX V

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2426-2439; Transcript 463-476)

Excerpt from Direct Examination of W. Elsner
February 20, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2426-2439; Transcript 463-476)

could invest it in any of the two in the middle.

Q Either of these would get you there?

A Right.

Q Okay.

A Can I--

Q Yes, I'm sorry, you can return home.

So based upon your testimony, let me ask you this question. When you entered into the October 8th agreement with Mr. Ng, were you in any way modifying or amending the technical cooperation agreement?

A No, we weren't.

MR. JENTES: Object, Your Honor.

THE COURT: It's leading.

Q (by Mr. Chase) Did you understand that your agreement with Mr. Ng had anything to do with the technical cooperation agreement?

A No, it was never mentioned. It was not any part of that discussion.

Q Okay. Now, let me ask you whether, after you had this meeting and agreement with Mr. Ng, did you go to Hong Kong?

A I did.

Q Can you explain what that was all about?

A It was a chance for Gene and I to go over and first-hand see the city and to meet some of the other people in the Wharf organization and, you know, have discussions with our people there. And one of my big objectives was to start the financial dialogue to begin raising the money for the 10 per cent investment we were going to make. So it had a number of purposes. Wharf was encouraging because they wanted to introduce us in Hong Kong and they thought that it would be valuable to have personal introductions of Gene and I over there. So, you know, there were a lot of reasons for us going, and Hong Kong wasn't the only place we went to. We went to a number of places where we had activities going on in the region.

Q Were you introduced in any particular way in Hong Kong, you and Mr. Schneider or your company?

A We were Wharf's strategic partner. So we were--

Q Who said that?

A Stephen.

Q In your presence?

A Yeah, in a lot of people's presence.

Q Who did he say it to, for example?

A Gonzanga Li.

Q Who's Gonzanga Li?

A The chief executive officer of Wharf. He introduced us as that to bankers that he was introducing us to. He introduced us as that to a luncheon group that he put together. This was very cordial. I mean, these were nice things that he was doing for us. And, you know, he did lots of introductions, and that's what we were.

Q When he referred to you as the strategic partner, did he tell you it meant anything other than what you've described as your understanding of that?

A No, he didn't.

Q Did you meet with bankers while you were there?

A Bankers and investment bankers, so financial institutions, yes.

Q Did you meet with any bankers or investment bankers while Mr. Ng was present?

A Yes, we did.

Q Did you talk with these bankers about raising money to invest in the Hong Kong project?

A Yes, we did.

Q With Mr. Ng present?

A Yes.

Q And did you tell these bankers that you were going to be Wharf's partner?

MR. JENTES: Object; leading, Your Honor.

THE COURT: Sustained.

Q (by Mr. Chase) What did you tell the bankers?

A Okay, and I'll differentiate between investment bankers.

Q Okay.

A Because--or people that would help us raise the equity. We had meetings separate from Stephen with two firms, Blackstone and Goldman Sachs. Stephen wasn't there for those. Those were separate meetings that I had. The meeting that Stephen set up for us was with the Bank of Hong Kong with, you know, somebody that was very senior there, to my knowledge, that had a great relationship with Wharf.

The two things that we were talking about were, one, that we would be putting a debt facility together for the project as a whole.

Q What's a debt facility?

A A loan agreement that would provide a significant portion of the money for the Hong Kong--construction of that cable television project. So you have two things. You have equity and you have debt, and you borrow some portion of the money you need from lenders, banks and other lenders, and another portion comes in through equity contributions, which is what you buy your ownership with.

Q All right.

A So what we talked about first with the fellow at Bank of Hong Kong was the idea that we were going to be putting together a debt facility for--we collectively, Wharf and UIH.

Q Was Mr. Ng there during this discussion?

A Yes.

Q Okay.

A For the entirety of the project. But then in addition to that, we wanted him to know that we were going to own 10 per cent of it and that we would be doing a financing, either regionally based or locally based, that would help us to pay for that 10 per cent, that we would have money come in to either UIH Asia or a company specific to Hong Kong for UIH, and so we wanted him to know that we would be active in the region raising equity as well for our 10 per cent interest, and we, you know, wanted him to be encouraging and if he had any way to support that, we would appreciate it.

Q Did Mr. Ng in that meeting voice any reservation, objection or concern about you discussing a co-investment between you and Wharf?

A No, he didn't.

Q Okay.

A Stephen was very supportive. Stephen was helping us out and, you know, and himself at the same time. He was introducing us as his partner and he was trying to facilitate us getting what we needed to get done, raising the money.

Q All right. And as far as you knew, there were no reservations expressed?

A No, there were no reservations.

Q Now, you say he was helping himself out, too. How did you understand that to work?

A Well, he was--he got credibility out of having us involved. I mean, I wasn't trying to do a sell job when I talked about Gene's reputation in the industry yesterday. I've had a long-standing and very credible reputation in the industry. We've got great connections. I mean, we add credibility. So by introducing us, it was to his benefit as well. I mean, it looked like a feather in his cap, I think, for purposes of people in Hong Kong, showing that, yeah, here we were, we were his partner, interested, involved, helping out.

Q All right. Now, you mentioned you talked with Gonzanga Li, the chief executive officer. Had you met him before?

A No, I hadn't.

Q Now, yesterday, I believe you testified that you presented the video tape to him; is that right?

A I said that we showed him the video tape.

Q You showed it to him?

A Right.

Q And did you leave it with him as well?

A Yes.

Q What--now, this was your first meeting with him, but not your first meeting with Wharf. What was the purpose of showing it to him and leaving it with him?

A He was a senior person from Wharf that we had never met before, and that video tape was the best quick way that you could introduce who UIH was, what its business philosophy and who the people were. So that was to bring him up to speed, you know, more hands on or tangibly who the people were he was partners with.

Q Did you tell him that you were going to be investors in the project?

A Yes.

Q Was Mr. Ng standing there?

A Probably sitting there.

Q Sitting there?

A Yes.

Q Did he object? Did he voice any reservation?

A No.

Q Let me ask you about a company called Dillon Read. Do you know who Dillon Read is?

A Yes, I do.

Q Who is Dillon Read?

A They're an investment bank, you know, great reputation, they're a Wall Street firm that participates in debt and equity placements for companies.

Q Okay, look at Exhibit 694, if you will, please.

A Okay.

Q 694 is a November, 1992--okay, this is not in the jury book, and I'm, frankly, just going to ask you about one portion of it, so I'm not going to bother showing it up on the screen. I'll read it to you. It's a--tell us what this is.

A It's a private placement memorandum. We were--we engaged Dillon Read to help us do an equity placement. And when I say private placement, you can go out and do public offerings where you sell shares broadly to lots of investors through initial public offerings and things, and secondary offerings, or you can do a private deal where you just take bigger chunks of equity and sell them to one or two institutions. So this was a private offering, a document to introduce the company to significant investors who might put 10, 20, $30 million in.

Q All right. Well, if you'll look over on Page 1, please, in the introduction, I'm going to read this sentence out of there and simply ask you whether it was a true statement at the time. On Page 1, it says, "In Asia, UIH will be a stockholder in the Hong Kong cable consortium with the Wharf Holdings, Limited and NYNEX, which is negotiating an exclusive franchise for the potentially lucrative Hong Kong multi-channel system estimated to be approximately 1.8 million homes."

As of that time, did you understand that to be a true statement?

A Yes.

Q And is that reflective of the agreement you reached with Mr. Ng?

MR. JENTES: Object; leading.

THE COURT: Sustained.

MR. CHASE: Okay.

Q (by Mr. Chase) Mr. Elsner, let me ask you if you're familiar with a company called Apollo?

A Very, yes.

Q Okay. Tell me who Apollo is.

A They are a sophisticated, I'd call them an institutional investor. They raise money from outside sources and they had a fund that had been--I would guess it's raised from pension funds and, you know, different investment pools, and they invest in private companies. They probably invest in public companies as well. But Apollo is a very significant financial institution with money to invest, some of it done privately, so they were somebody that could have been a, and turned out was a good investor for UIH.

Q And did you deal with them?

A Yes, I did.

Q And did you talk to them about UIH's right in Hong Kong?

A Yes, I did.

Q On more than one occasion?

A Yeah. Apollo is very thorough. I had lots of meetings with them, and they had different partners involved at different times. So I probably went through the UIH background a half a dozen times.

Q And did you talk to a Ms. Pandora Pang?

A Yeah. Now, she wasn't one of the partners; she was one of the associates actually doing more of the leg work. But, yes, I talked to her on numerous occasions as well.

Q And did you talk to her about your rights in Hong Kong?

A Yes.

Q Now, in the Apollo transaction, you had a complicated agreement, and as part of the agreement, you were required to make disclosure under a draft registration statement. Do you remember that?

A Yes, I do.

Q Can you explain what that means, please?

A When we were putting together the agreement with Apollo, we made it clear to them that we were also in the process of putting together the documentation for a public offering. We were working on our initial public offering, which is the first time we would have sold shares in UIH broadly, and a registration statement is the document that we would have prepared, without regard to the Apollo transaction, that's the document that we were preparing to register with the Securities and Exchange Commission and sell shares to the public. So--

Q Okay, go ahead, I'm sorry.

A I was going to say so since we had already put all that work into putting that document together, Apollo, as a part of the agreement we did with them, wanted us to give them comfort that they had read that, that that was something that was accurate and that they could rely on as well.

Q All right. Now, look at Exhibit 1146, please. Now, 1146 are selected pages from the April 21, 1993 registration statement filed with the Securities and Exchange Commission; is that correct?

A I just now got it. Hang on.

Q Okay.

A Yes.

Q Look over on Page 64, if you will, please, and I'm just going to read to you one sentence from there at the top paragraph. Are you up there on 64?

A Yes, I am.

Q And it's talking about Hong Kong, and in the last sentence of the first paragraph, it says, "Upon the award of the franchise to Wharf Cable, the company will be entitled"--the company meaning UIH; correct?

A That's correct.

Q "The company will be entitled to acquire a minimum of 10 per cent of the equity in Wharf Cable with Wharf Holdings maintaining the remaining portion." Do you see that?

A Yes, I do.

Q Is that the disclosure you made to Apollo?

A Yes, it is.

Q Okay. You were required to give them a draft of the registration statement. In the draft that you gave them, did it say that?

A Yeah, that was the deal. That was the fact.

Q All right. Now, let me ask you if you're familiar with a company called Smith Barney?

A I am.

Q And tell us who they are.

A Another investment banking firm, larger than Dillon Read, but the same kind of a company that would help companies raise debt and equity funds.

Q Look at Exhibit 995, please.

A I keep missing the cutoff on these books.

Q Are you there?

A Yes.

Q Can you tell us what that is?

A It's an analysis of--or evaluation of UIH Cable interests that--it looks like it was given to Smith Barney on January 28, 1993.

Q All right. And if you could flip over to the valuation for Hong Kong?

A Okay.

Q It shows UIH ownership of 10 per cent; do you see that?

A Yes.

Q What does that reflect?

A That reflects what we were going to own of the Hong Kong cable television project.

Q All right. And then it gives a valuation there of $50 million as of that time; correct?

A Yes.

Q Now, you mentioned a moment ago when I asked you about a registration statement, that that relates to a public offering of securities; right?

A That's right.

Q And did UIH in fact follow through on its public offering of securities in the spring and summer of '93?

A The offering was actually in the June and July time frame of '93.

Q Was it successful?

A Yes.

Q How much money did you raise?

A About $66 million.

Q All right. And you believe that closed at roughly what time?

A It was the latter part of July, 1993.

Q Now, that would mean then that as of that time, you had 66 million new dollars?

A Well, we were--the Dillon Read book and the discussion about Apollo, that was a successful placement as well. In about the April time frame, Apollo invested $30 million into UIH. So you had 30 million coming in from Apollo and then you had 66 coming in from the public offering. So, I mean, the dollars were--I mean, you can't identify which dollar comes from where or anything, so we had more than $66 million.

Q And this is by the end of July, '93?

A Yes.

Q Did you then have occasion to talk to Mr. Stephen Ng?

A I made it a point to call him right at that time, right at the end of July or the beginning of August, yes, I did.

Q Why?

A I wanted to let him know that the financings that we had been contemplating were successful, that we had raised the money, that I was real pleased that there was no more issue with us coming up with the money to be the 10 per cent partner in the Hong Kong cable project, and so I wanted to tell him,

and the guts of it was that we don't need to deal with this time period or an option any more, let's just go right and get the thing wrapped up as a pure investment without worrying about the option.

Q And what did Mr. Ng say to you?

A I don't remember. He was congratulatory. I mean, that was my recollection. He was happy. I mean, he expressed congratulations or pleasure that we got that done.

Q Did he give you any hint or any reason to believe that somehow your deal was in jeopardy or the deal was off?

A No, he didn't.

APPENDIX W

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2608-2632; Transcript 641-665)

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2608-2632; Transcript 641-665)

phone company was looking at the business too and they said will you be our consultant. We said we don't consult. And they said, well, what if we pay for your work and you guys keep the work product and we keep the work product, and both of us can use it for going into business later. And under those strict conditions, we agreed to do it. In fact, ultimately, we have gone into the business, not with them either. We ended up we're competitors to them.

Q Okay. You say we don't consult. Have you ever walked away from deals where people wanted you to be consultants?

A Yes, many, many times.

Q Can you give us a couple of examples?

A We walked away from the Singapore deal in its entirety because it was driven by a consulting condition. We walked away from deals in Germany that I can recall with the Duitches Mundez (phonetic) post and others that would only allow consulting relationships. It comes up probably, or did more back in those days, probably once a month somebody somewhere around the world would ask us if we'd consider being their consultant, and we always said no.

Q Why?

A The nature of our business is to invest. We are an investment company. We are a holding company. We are a company that builds its value using its talent and capital entrepreneurially. The consulting business is an entirely

different kind of business. We really can't afford to use our precious resources in a way that just gets us an hourly fee or something. We're out there to build into assets a large appreciation, a large growth in those assets, and that requires an investment.

Q Of course, in effect, doesn't work you're ready to take the risk of loss?

A Absolutely.

Q And you have had losses?

A Absolutely.

Q Now, let's talk about Hong Kong. Tell us a little bit about how you got involved in that and how you got interested in it and why and when. It's about five questions, but it will give you a chance to talk for a minute.

Q Well, it's odd but United Cable actually was the first contact with Hong Kong back before UIH, and when I was running development there, I remember now that U. S. West asked us if we would consider joining them in the Hong Kong cable project, and we actually sent people to Hong Kong who I believe met Stephen Ng and Peter Woo. Mike Anziano I remember going and I think an engineer or two went to look at the project back in the--I think this would have been '87 or '88, or something like that, maybe a little later, maybe even '89. So that was the first contact we ever had with it, and we passed on that opportunity at United Cable at that time because there were just too many partners. There was Codatel from Belgium was in there and U. S. West was in there. There was I think somebody else, plus Wharf, and it just looked like too many cooks. So we passed.

Q Do you know what happened to that situation, that first consortium?

A I do know what happened.

MR. JENTES: Object until we lay some foundation as to how he knows it.

THE COURT: All right.

Q (by Mr. Chase) Did you have discussions with people in Hong Kong, particularly people at Wharf, about what happened?

A Yes.

Q Who did you talk to about that?

A Stephen Ng.

Q What did he tell you?

A He said the --

MR. JENTES: Can we find out when this occurred?

THE COURT: Yes.

Q (by Mr. Chase) Did you have discussions with him in 1991?

A Yes.

Q Okay. Roughly the spring?

A Yes.

Q Could you tell us what he said?

A He said their partnership unravelled.

Q Did he say why?

A I think he largely thought it was U.S. West's fault at that time, is my recollection of it.

Q And what was he looking for from you?

A Stable partner.

Q And what were you looking for from him?

A A strong local partner with an interest in the business, a willingness to see it through.

Q All right, let me wait a minute before we get to the specifics of that. You were talking about United Cable got involved. How did you get back into Hong Kong?

A Well, we knew that we--also it was in the Trade Press and things like that that the thing had fallen apart, so we knew Hong Kong, that the first franchise application, which had been granted, had somehow unravelled, and we had heard rumors from U. S. West and I'd heard Stephen's side when I finally met him. But the way I met Stephen, as I recall, was William Ng, our partner in UIH Asia, arranged a meeting, and I don't know who contacted who first for certain. William said they contacted him, and I think some of the correspondence I read around this case shows that William may have contacted Peter Woo, Stephen's chairman. And in any case, Stephen answered and said yes, he'd like to take a meeting, and we were in Asia for business and we stopped in Hong Kong to visit with Stephen.

Q Roughly what period of time are we talking about?

A I think this is spring of '91.

Q Okay. And as best you can recall, what was Mr. Ng's title at the time?

A I believe he was managing director of Wharf Holdings.

Q Was that a significant post, as you understood it?

A We would consider it equivalent to the post of president in the United States.

Q What kind of authority does that carry with it as far as you understood?

A Well, it carries with it usually the full force and weight of all corporate authority. Usually there can only be one or two officers higher than that in a company, sometimes not one in the case of the managing director. That can be the big honcho.

Q Well, you know that Mr. Woo was the chairman; right?

A I did know Peter Woo was the chairman.

Q And you knew that Mr. Ng reported to Mr. Woo?

A That was my understanding.

Q Okay. Between them, were you aware of any other authority levels?

A No.

Q Now, did he discuss to you his authority with respect to the cable TV project?

A Yes, he did.

MR. JENTES: Are we now talking about this meeting in the spring of '91, Your Honor. I've just--it started getting vague here as to what this is about.

THE COURT: All right, clarify it, please.

Q (by Mr. Chase) In the spring of '91 when you're talking to Mr. Ng, did he discuss with you his authority with respect to this project?

A Then and thereafter, we discussed it often.

Q Well, why don't you tell me what you remember about your first discussions about this, and then others during that same period of time. We'll get to the later periods of time as we go. But I'd like to stay in this spring and summer, '91 period.

MR. JENTES: Your Honor, I'm going to object. We're now getting into the important sequence of events. I think we ought to tie it down as best we can to a meeting that took place at some place with so many people there and--

THE COURT: You can bring that out on cross-examination. Overruled.

THE WITNESS: My recollection of the first meeting we had, and I believe that William Ng was with me and I believe Mike Fries may have been there with me, was sort of a general discussion of Wharf's interest in the cable television business, their desire to stay involved with it, their unhappiness at what

had happened in the first round, and on losing it, their determination to get back involved. They thought it was going to be an interesting business and they were hoping that some kind of a governmental bidding process would come forth that would allow them to get back in it. And Stephen, as I recall, said he intended to be, or Wharf had asked him to be, one or the other, the primary manager involved with the business.

Q (by Mr. Chase) Now, you've used the word Wharf. Which Wharf did you understand you were dealing with at the time?

A Wharf Holdings, the parent company.

Q All right, I'm going to ask you to look at an exhibit here. You've got some books there. Look at Exhibit 151, if you will, please. And it's also in the jury book. Do you see that?

A Yes, I do see it.

Q Now, this--I'm going to ask you to look over at the signature page. That's your signature on behalf of UIH?

A Yes, it is.

Q And that's Mr. Ng's signature on behalf of Wharf Holdings?

A Yes, it is.

Q Now, tell us what this document is, please.

A I believe it's a confidentiality agreement.

Q Okay. And it talks about in connection with your request for the purpose of considering a participation in our project. Who's project did you understand he was referring to?

A I think he was referring to Wharf's project to bid on the cable license.

Q Wharf Holdings?

A Yes.

Q Okay. And it's signed by Stephen Ng, Wharf Holdings; right?

A That's what it says.

Q Any question you were dealing with Wharf Holdings?

A Not in my mind.

Q Has that ever changed during the whole period of time that you're dealing with Mr. Ng and Wharf?

A That's a complicated question. We always thought we were dealing with Wharf Holdings. As I recall later on, there were some subsidiaries created that we also were dealing with, but always controlled and held by Wharf Holdings. So we always thought we were dealing with Wharf Holdings.

Q Where did you understand the power and the money was?

A Wharf Holdings.

Q Okay. Now, let me go back to my screen here for a second. I'm going to ask you to look at Exhibit 102, and I believe that might be in the jury book as well. No, that's not, so I'm going to run something up on the screen so we can see it. Do you have 102 in front of you, Mr. Schneider?

A No, I'm sorry, I don't. I do now.

Q All right, 102 is a letter from Mr. Hudon of your company to Mr. Ng, and I want to focus on some language in that letter, and it's over on the third page and you can look up at it on your screen actually. I've highlighted it there. It says, "UIH's fundamental objective in Asia is to create asset value for its investors through the development of multi-channel television systems and related businesses such as telephony in a variety of markets." Do you see that?

A Yes, I do.

Q All right. Now, is that, in your mind, an accurate description of your business as being investors?

A Yes, it is.

Q And did you discuss with Mr. Ng in the spring of '91 and in the summer of '91, UIH's role as investors?

A Yes, I did.

Q Did the subject of being consultants come up?

A I think it came up, but it was quickly dispelled, if it did. We just said we don't do that, so Stephen was told that we were investors only.

Q Was that a problem?

A I don't think it was necessarily a problem with him. He understood what we were interested in, and we said we wouldn't be interested in any kind of consulting arrangement. He was mulling over, having had a pretty tough partnership experience, it sounds like, what kind of new relation should come on, and I think he understood if we were to be involved, that in all cases, we had to be part of an ownership group.

Q All right. I want to call your attention in that same document over to Page 5, and I'm going to put this up on a gizmo here we call an Elmo. And I'll ask you to look where it says, "Option to invest," in the same letter from Mr. Hudon.

A Yes, I see that.

Q Okay. Now, at that point in time, Mr. Hudon's proposing an option to invest; is that right?

A Yes, he is.

Q How would that work generally; how does an option work?

A An option is a right to invest at a later date in a project or a property or a stock. In this case, he's talking about an option to invest into the cable venture, in the Wharf Cable, at 25 percent, which would indicate that we would intend to put our money in later than they did.

Q Was that something that was important to UIH?

A It was essential for us back then. We had--we could only raise money around rights.

Q What do you mean by that?

A Well, if you walk into a financial institution and say, you know, I'd kind of like to have 100 million of your dollars, they'll go, well, why. So you then say because we have this right to invest in this project and we're going to put 20 of ours in and we want 80 of yours, and then we'll have an arrangement with them as to how that economic split occurs later. But--not later how the economic relationship with each other might be, but you need first to have a right to purchase.

And a good example would be what we did with John Malone when we bought the properties in Europe. John said, listen, we don't really want to run and own these properties. We buy them all. And we said, well, we'd like the option to buy everything but England, and he said, well, if you can get this thing done and financed and buy out our interest by such and such a date, I think it was around a year, you know, six months at least, then I'll sell them to you.

And we went around and we looked for some--we had some money in our treasury then, probably $20, $30 million, but we needed a hundred and some million dollars to finance the business. And I believe ultimately, we made the deal with U.S. West where, because we had those rights and they knew we had those rights, they put in I think 90 or 100 to our 10 or 20 kind of thing, and that's how we financed it.

Q Can you go raise money saying we think we're going to get a right?

A Not very easily, no. In fact, virtually never in private capital.

Q In your early discussions with Mr. Ng, did you discuss this kind of financing with him, and this is the way UIH does business?

A Yes.

Q Did he have a problem with that?

A Not that he expressed.

Q The whole time you were dealing with Mr. Ng, and this is going to cover like a three year period, was it ever in doubt as

far as you were concerned how UIH goes about funding these things?

A No. In fact, it was explicitly stated and explained on many occasions.

THE COURT: Let's take a recess now, please.

MR. CHASE: Thank you.

THE COURT: About 15 minutes.

(Jury excused.)

THE COURT: We'll be in recess.

(10:20 a.m. - Recess accordingly.)
(At 10:36 a.m. on February 21, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(Jury present.)

THE COURT: Go ahead, please.

Direct Examination by Mr. Chase resumes:

Q Mr. Schneider, I'm going to ask you if you would open your exhibit book there to Exhibit 105, a letter from Mr. Ng back to Mr. Hudon, and I'm going to put this up on the screen. Now, I'm going to ask you about a portion of this letter that Mr. Ng sends to Mr. Hudon, and I'm going to ask you about Mr. Ng's description of what's expected of a joint venture partner, and the first part of it is, "We feel each of us almost has a right to expect that each of the other partners would bring a great

deal of additional value to the consortium over and above capital." Do you see that? It's down towards the bottom. And you can look on the screen, too.

A Yes, I do see that, yes.

Q All right. Now, with respect to the concept of capital, did you have any understanding that there could be a partnership relation with Wharf where there wasn't a contribution of capital by both and a right to share in the profits of the company?

A No, I didn't believe there would be a partnership without a contribution of capital.

Q Did Mr. Ng ever represent to you or tell you that he had any other visions for such a partnership?

A No.

Q Now let me jump ahead here to another portion of this, when Mr. Ng goes on to say, "I envisage an important role for a strategic partner is to contribute its expertise to and support the local management team as needed, which is in my view the most important reason for putting partners together." Do you see that?

A Yes, I do.

Q All right. Now, at this time or at any time, was it your understanding that Wharf really needed your money?

A No, I didn't think Wharf needed our money.

Q What did Wharf need?

A It needed the expertise and know-how to develop their business that they wanted to be in.

Q Okay. And what did you need?

A We needed their ability to politically gain the license. We needed their capital support and we needed their knowledge of the local market.

Q Did you need a right to invest?

A Well, yes, obviously for our investment opportunity, we had to have a right to invest.

Q All right. And did these needs ever change over the whole time you were dealing with Wharf?

A No. And whenever I think of strategic partner, I think of those two elements. You have--partner means partner. It means you're in a relationship of risk and reward with somebody where both are making investments. Strategic means strategic. On their side of strategic, it is their local presence. They had no real knowledge or ability in this business as far as we could tell, but they were very powerful locally, conducted business in Hong Kong regularly, had extremely powerful political contacts, and they had capital to support the business.

Q Let me ask you about this term strategic partner for a second. Let's stay there for a second. Let me ask you to--I'm going to show you Exhibit 79, a May 30, 1992 letter from Mr. Fung to a Mr. Nathanson. Do you know who Mr. Fung is?

A Yes, I do know who Mr. Fung is.

Q Now, who is Mr. Fung, as far as you knew?

A Mr. Fung was Stephen's right-hand man in this project, Emil Fung I believe you're talking about; right?

A Well, let me show you how he saw the strategic partnership, or you can look up on the screen there in his letter to Mr. Nathanson. "In the truest sense of a strategic venture, we envision that all of our, "I'm sorry. It always helps to have it on the screen.

MR. JENTES: What's the number?

MR. CHASE: Exhibit 79, May 30, 1992.

Q (by Mr. Chase) "In the truest sense of a strategic venture, we envisions that all of our strategic partners will participate at a ground floor level alongside Wharf and share pro-ratably in both the upside and downside of the venture." Do you see that? You can look up on the screen there.

A Yeah, it doesn't seem to be the same thing as in here, though.

Q Well, Exhibit 79 is a collection of documents. If you'd just look on the screen there, Mr. Schneider, do you agree with that aspect of a strategic partnership, what Mr. Fung said?

A That's a generally accurate description.

Q Did you ever have any conversations with any of the Wharf people over your entire relationship to lead you to believe that they had some other understanding of what a strategic partner was with respect to capital sharing and profits?

A No.

Q Let me ask you to turn over to Exhibit 122. This is a September 4, 1991 letter, and I'm going to put these on the screen so people don't have to worry about heavy lifting for the moment. This is a September 4, 1991 letter from Mr. Ng to you. I'm going to ask you about a portion of this letter.

I'm going to go onto the next little portion of the letter. Mr. Ng's talking in this letter about -- no, I'm sorry, I've screwed this up. Let me ask you to look at the letter and we'll talk about it. The September 4, 1991 letter, you tell Mr. Ng that you would like a 20 per cent stake rather than the 10 per cent; is that right?

A Actually, he's writing me here in this letter.

Q In that letter, right.

A So I'm not telling him.

Q Oh, that's right. Okay, I'm going to read the part that I wanted to focus on, because my--well, I can do it this way. Let's do it this way. When one system fails, there's always another. Now, this is Mr. Ng writing to you; right?

A Yes.

Q Okay. "I recognize your interest in taking an approximately 20 per cent stake. As I explained to you before, however, there is presently a 10 per cent restriction on how much a foreign investor may own in a television licensee in Hong Kong. Special dispensation was granted by government in the case of U.S. West to enable it to hold 25 per cent in the last consortium, but dispensation is granted on a case by case basis. In the event for whatever reason that we are unable to offer

UIH an interest that exceeds 10 per cent, I will need to know what your position will be. Finally, help me explain to my board and to government as to whether UIH's participation will be partly or wholly funded by UAE." Do you see that?

A Yes, I see all of that.

Q Who is UAE, by the way?

A United Artists Entertainment.

Q Okay. Now, talk to me about the discussions you were having with Mr. Ng at about this time about the percentage stake and how UIH would go about financing it.

A Well, I explained to Mr. Ng that the way we did business was to provide our expertise and effort and add capital, but that we would want to own a substantial part of the business we were doing that in, and so that we were seeking a 20 to 25 per cent minimum threshold level at that time. That's what I was asking him for. And we would like to have that right as part of any consideration of being partners together.

Q Okay. And he wasn't anxious to talk in that range, was he?

A No. I think what he did was respond that 25 per cent would require specific government approval, which we knew that U. S. West had obtained in the prior go-around, and he says that I think in here, too, and that if we were to go beyond 10 per cent, which is the number he was more comfortable with, then we'd have to get government approval.

Q Did you agree that 10 per cent would be adequate?

MR. JENTES: Excuse me, Your Honor. Agree with whom?

THE COURT: Rephrase the question.

Q (by Mr. Chase) Did you agree with Mr. Ng that 10 per cent would be adequate?

MR. JENTES: Now I'd like to find out when and where this occurred, Your Honor. I think I'm entitled to that.

THE COURT: All right.

Q (by Mr. Chase) Well, I'll tell you what. I'll show you a document. Look over, if you will, at Exhibit 124. This is a letter of September 6, 1991 from you to Mr. Ng. Are you there?

A I have it, yes.

Q All right, let me focus in on some language that I want to ask you about. If you'll look on the screen, "The 10 per cent number may be acceptable, but we would prefer to target 20 per cent and work with the government toward that end." Is that right?

A That's how I responded to him, yes.

Q All right. And throughout your relationship with Mr. Ng and with Wharf, did you have this conversation about trying to move the percentage up?

A Yes.

Q Were you, however, throughout your relationship, content to stay with a minimum of 10 per cent?

A We became content, if not at this point, later on we became content with 10 per cent and stayed with that as the floor that we would be willing to accept.

Q Now, did you strike a deal with Wharf in 1991?

A No, I don't think we'd struck a deal with Wharf in 1991.

Q Now, in talking about the percentages, did you explain to Mr. Ng how you would go about financing the acquisition?

A I had explained to him that we would have to finance the acquisition of our interests. Based upon a business plan that we both believed in, we would have to know the size of the equity that UIH would be responsible for. I said that we would come with our part of the capital. We generally financed it either through--one of two routes were possible. Either a public offering which we subsequently did to capitalize the whole company at a larger level so that we could acquire public market funding, or we'd do another private investment. We'd been very successful at raising money privately. You know, we always use our money, as well, but we would then surround it with the types of people that invest at large amounts of money behind expertise like ours. And, we said we would have no trouble under these circumstances coming up with our part of the money.

Q So, did you explain this to Mr. Ng?

A Yes. We had long discussions about this.

Q And, did you explain to him that you don't carry that kind of money in your bank account?

A Yes, he was quite aware of that.

Q All right. Let me ask you to look--well, I'm going to show you actually because I'm going to show you the whole thing, the portion I'm going to ask you about, at least. Notes of Wharf Cable weekly coordination meeting on January 21, 1992. In the jury book is Exhibit 192 and I want to just focus your attention on--you can look at the touch screen because I'm just going to focus your attention on the part of it where internally--have you found it in the book? You can look on the touch screen because that's the only thing I'm going to ask you about where it says, "UIH's financial capability is not satisfactory ." Now, this is January 1992.

Now, Mr. Schneider, did Mr. Ng tell you at or about that time or any time that UIH's financial capability is not satisfactory?

A No. We had discussions later on about the issue in terms of how it might affect the government bid, but he certainly never said Wharf felt that it was unsatisfactory.

Q If they had told you in January that your manner of financing things or your financial capability is unsatisfactory, would you have gone any further with that?

A No, I would not have.

Q Was there any prospect in January 1992 that you were going to change dramatically the way you did things financially?

A Not in 1992, no.

Q Okay. Let me ask you to focus your attention on our time line for a second here.

A I can see it, but not very well.

Q I'll tell you what. We have a--may I approach the witness, Your Honor /

THE COURT: Yes, of course.

(Pause.)

Q (by Mr. Chase) I'm going to focus you for a moment, Mr. Schneider, if you would--I didn't bring my electronic pointer today--but, Singapore meeting, June 1992; do you see that up at the very top of the chart in the beginning? You have to look over to your left hand side.

A Oh, yes, I'm sorry. I was looking in the wrong area. Yes, I see it.

Q Okay. Do you remember meeting with Ng in Singapore in 1992?

A I do.

Q First of all, why were you having this meeting with Mr. Ng?

A To firm up our relationship and decide if we were going to work together in the Hong Kong bid.

Q Can you describe for us what you discussed at that meeting?

A We discussed our willingness and eagerness to be a partner with him in the bid. Stephen expressed that he had gone through and reviewed alternative partners and decided that for the cable portion of the bid that UIH was the selected partner. He expressed that he felt NYNEX would be the appropriate phone partner and that they'd had serious

discussions with NYNEX. And, I recall him also mentioning he thought that Fox may be interested in being a programming partner, so that we'd have a four-way group in the consortium including Wharf.

Q All right. Now, you mentioned that he said he had talked to other cable television potential partners. Is that right?

A Yes, I believe he did say that.

Q And, were you familiar with the names he was talking with you about?

A I think he mentioned having spoken with Time-Warner and TCI, Falcon, maybe even ComCaster Continental. He mentioned that he looked around at a lot of them, felt that our particular focus on the international market and the fact that we'd been successful both domestically and in the international arena counted for a lot and he knew that our group was--you know, the A Team in our business was focused purely on the international and he decided that that was the kind of partner he needed to succeed this go-round.

Q When you say the A Team is primarily focused, what do you mean by that?

A Well, what happens with a lot of larger corporations, much like when we had the United Artists/United Cable, you start picking people that are expendable rather than putting your best people into international projects because, you know, your core business where you make all your money is back here in the states. You don't want to rip loose some of your better people and take a chance on harming your cash flow. So, what we often observed is you see these kind of has-beens or second rate people ending up being picked. I think that's changed a lot in the last few years. People realize how difficult

these international markets are. We always went with that approach. We picked the best that we could get and put them in. It certainly had the focus of Gene and Bill and I, the principals of the company.

Q So, he indicated to you that he had shopped the market and he was going to ask you to be his partner?

A That's what he indicated.

Q Now, you had by this time been talking--you started talking to him over a year ago, right?

A Yeah, we'd had a cordial relationship going back to April, or something like that, of the prior year.

Q So, this meeting in Singapore was not an opening discussion?

A No.

Q Now, did he talk about the need for your expertise and the condition of the expertise that Wharf had at the time?

A Yes, he did.

Q What did he say?

A He said we very much need you in order to get our business plan and our--our plan and an implementation of this business up and running. He was not confident with the expertise he had internally.

Q Well, what did he tell you his internal expertise was?

A He had some people that had been around for the first bid, primarily Englishmen, that had worked on that first bid with him, and I think a couple of American guys that were pretty light in our industry. We knew about them.

Q Well, did he express dissatisfaction with the quality of advice or services he was getting from these people?

A As I recall, he expressed significant concern about their ability to deliver the business.

Q Were these consultants or were these people from another cable company?

A I believe they were consultants.

Q To your knowledge, were these people who had ever implemented or operated a cable system?

A Not of any substantial nature. I think, some of them had some limited experience at a very small level.

Q Had you ever heard of NYNEX at this time?

A Of course.

Q And, he told you that NYNEX was going to be their telephone partner?

A He said that they were in deep discussions with NYNEX, and he thought they were going to come along as a telephone

APPENDIX X

Excerpt from Direct Examination of M. Schneider

February 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2636-2641; Transcript 669-674)

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architectures. We were getting into basic architecture, and we had more than enough expertise internally to do that.

Q Did Mr. Ng indicate that Wharf, though, was quite anxious that NYNEX participate?

A He wanted NYNEX to participate.

Q Did he present this to you as a deal where NYNEX would participate or there would be no deal?

A No.

Q Did he present this as they'd have to have a telephone partner or there would be no deal?

A No. Mr. Jentes: Excuse me, Your Honor; two objections. First, it's leading.

THE COURT: It is.

MR. JENTES: Secondly, it seems to me we ought to find out what he actually said rather than all this vague.

THE COURT: Sustained.

Q (By Mr. Chase) What did he say about NYNEX?

A He said he'd like to have NYNEX in as a partner. Did I have any problem with that? I said no.

Q All right. Now, let me ask you to look at a memo that you sent back to Denver following that meeting. This is Exhibit 237 and I'm going to put a portion of it on the screen one way and portion of it on the screen the other way, I think. Look at 237. And, it's in the jury book and it's a memo from you to Bill Elsner and Gene Schneider, June 4, 1992, do you recall this following your dinner meeting with Mr. Ng?

A Yes, I do.

Q Okay. Now, it says, " It looks like we are in for 10% of the Hong Kong project along with NYNEX at 15 to 20%; Fox, 5 to 10%; and, Wharf, the remainder. Do you see that?

A Oh, I'm sorry. A lot of things to remember here. Okay. Now, it's on the screen.

Q Okay. What is it about that discussion with Mr. Ng hat caused you to conclude we're in?

A He said we were in.

Q Okay. Did he say anything else? I mean, did he --

A He said I've reviewed all of the potential cable partners. We've decided we'd like you to be our cable partner and I can offer you a 10% level as a partner in the business.

Q Well, what did he want from you at that point in time?

A He wasn't us to help him develop his expertise and build his business plan, win his bid, and help implement the business.

Q Did you commit right there on the spot?

A No.

Q Now, let me ask you--I'm going to put the rest of this document on the screen. I don't have it on the video, but I've got it on Mr. Elmo. Down towards the bottom of this little memo, it says, "The bad news is we need $40 million by next year, but we have a lot of time to work through business plans, and there will be ways out of the deal depending on approval, et cetera. Here we go again, boys." Do you see that?

A Yes, I do.

Q Okay. Explain to us what you meant by there would be ways out of the deal?

A Well, as we already were discussing, we generally invested on an option basis. If we could get our partner comfortable with the business plan that we believed was financible and that they would both support, particularly when you're a minority, then we would go ahead and get board approval to fund. If we found we couldn't get something together that worked, then we would usually not exercise our option, although that hadn't happened very often, if ever, at that point in our business. So, what I meant to say was we're not going to have to commit to $40 million tomorrow; we'll have time to find out what this business plan looks like and at some point we'll be going to the board for approval for that amount. Something like that amount which we--in rough numbers, we thought would equate to 10% of the equity required for this business.

Q Now, would you need board approval to commit to help Wharf win the bid and implement the system so you could have your option?

A No.

Q You wouldn't need board approval for that?

A No, we wouldn't.

Q At what point would you need your board's approval?

A When we made the investment decision.

Q When you actually decided to exercise the option?

A Yes.

Q And, fast-forwarding way ahead in this, did you seek your board's approval at some point in time to put the money into the project?

A I believe, Bill did seek board approval later on in the project. But, I --

Q Okay. Do you know whether you had an opportunity to even get board approval?

MR. JENTES: Excuse me, I think, Mr. Chase interrupted the witness answer. Maybe I'm wrong.

THE WITNESS: I don't think he interrupted me. What was the next question?

Q (by Mr. Chase) Did you have an opportunity to get your board's approval?

A We never really had the full opportunity to get it because they reneged on the investment opportunity before we could ever fully establish it at a leave where we had to get formal board approval.

Q Okay.

A I think, Bill and I both informally polled the board more than once and they certainly were willing and stood ready to support an investment as soon as it was formally completed that we could invest.

Q When you say formally complete, you mean written down?

A No. I mean, when a guy is ready to accept your check. If you would buy a house or a horse from somebody and you try to go pick it up and he goes and hides and locks himself in the bathroom, it's pretty hard for him to take your money. So, we weren't able to complete in that sense.

Q Okay. Now, did you understand that if you committed to help Wharf get its bid and implement its system, that Wharf would have ways out of honoring your option?

A Absolutely not.

Q Why not?

A Because we had to put our part of the consideration in first. We had to start committing time, effort, money, resources, and people in advance of the time when either of us would be able to invest. If you look at how this is working, we had a bid procedure. Then, it takes a series of months to win the bid at which point I assumed his own board would have to sit down and say, you know, Stephen, we've looked at the bid now and we're ready to put our $200 million to $300 million or $400 million in. At the same time, our board would say, okay, we're ready to put our 40 in. But, all of our work had been done--not all of our work, but a substantial portion of the important part of our work had been done in setting that business up, hiring the people, developing a functional plan which they certainly didn't have, and helping them not only win the bid, but actually launch a business. That's the hardest part of it. It starts to get

easier from there. It's not simple by any means and the proof is in the pudding in this business. The first three or four years is really essential, but you don't have anywhere to do, at all, if you don't win the bid and if you don't set up that business plan correctly in the beginning. So, that's when our highest value is, and that's when we make our deals.

Q Okay. Let me ask you if following this meeting in Singapore, you then met with Mr. Ng and some of this colleagues in Hong Kong?

A I believe I did.

Q Okay. Let me put on the screen here Exhibit 247 which is a United International Holdings schedule for visit showing distribution to various members of Wharf. Do you see that? I don't believe this is in the jury book. So, I'll have to do it up here.

APPENDIX Y

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2591-2605; Transcript 624-638)

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2591-2605; Transcript 624-638)

cooperation agreement in this case?

A Something like that, yes.

Q Okay. Do you ever have those before you've invested or had a right to invest?

A Not that I can recall.

Q Okay. Now, let me ask you--I'm going to ask you to come back to the board for a second because I want to talk about who did what at UIH during the time period we're going to be talking about here.

This is the reporting relationships chart from 1991, '93, I guess, and ask you if you would explain who these people are and what they did.

A Okay, I'll go bottom up here. Blake Williams was an engineer and still is working with us, an engineer that was assigned to the Asian region.

Q Wait a minute. Excuse me a second. Could you speak a little bit louder so everybody in the room can hear you?

A Sure. Okay, I'll start from the bottom up here on this chart. Blake Williams was an engineer assigned to Asia for us, and at this time was working exclusively on Asian projects. Sonjia Norman was a young attorney we hired over there to help do documentation and pull together deals for us in Asia. Bill Pittman was the man we put in sort of as our general

managing director. He had a lot of operational background and good people skills.

Q Put him in where?

A Put him in Asia. They're all in the Asian group.

Q Okay.

A Okay, if you go up through here, Dave D'Ottavio is our chief operating officer reporting to me. Mark Booth was the head of our programming unit reporting to me. Excuse me?

Q Let me back you up a second. Rather than run through these, because chief operating officer may not be obvious to everybody, explain to us what a chief operating officer does and what Mr. D'Ottavio's background was.

A Well, maybe I should do a little bit of that. I mean, these people have many years of experience. Is that what you're getting at?

Q Why don't you do that, yeah.

A Well, Sonjia was not very experienced. She was kind of a young lawyer there. But Blake had many years of experience with Time Warner and other companies I recall as an engineer, and we were very happy with his engineering competence. Bill Pittman had been a manager for other companies. When we hired him, I think he had been most recently in England working on projects, but had worked in the States extensively.

Q Now, was he made chief operating officer of Wharf Cable?

A Ultimately, yes, at least acting, I remember.

Q On your payroll?

A Yes. David D'Ottavio came from ComCast, which is a well respected East Coast based cable and communications company, and Dave ran their cellular division and their cable division, about 800,000 customers as I recall.

Q Is that considered a large system?

A Yes, that's quite large, even by today's standards. And Dave was our chief operating officer worldwide reporting to me. Worldwide at this point was about six countries, but it's still quite a bit of travel and effort to manage all those businesses.

Q What's worldwide today?

A I think we're pushing 30 countries, in the twenties, operating in probably five or six more coming on line this year. Ellen might even remember better, but right in there.

Q Go ahead.

A Mark Booth had come from ViaCom. He was the founding CEO of MTV Network in England. We knew him well. He now is at Fox running--ran their Australian operations and is now running their satellite venture in Japan, a very, very capable programming executive.

Paul Case was at that time, and I still think is one of the preeminent people in MIS in the country. He knows billing systems of all sorts as well as they can be known.

Q Is that the same thing we referred to before as SMBS?

A Well, these letters tend to change over the years. Gosh knows why. But this is management information services, is what we used to call it. Now we call it subscriber management and billing services. Why that happened, I'm not sure, but that seems to be the evolution of the -- back then we called it MIS.

Q Okay.

A If you go over to this side for a second, Mike Fries, who was very involved in this transaction also, was our head of development. We sort of divided our businesses up into Dave watching over what's going on in the operations; Mike working hard on development. He came from Payne Webber. He's a very, very bright financial man. He now runs our Asian Pacific Division.

Q Okay, let me ask you for a second, because I can see the geography is a little bit difficult, I want to make sure everybody can see the chart. Can all the jury see this? And I don't mean to keep turning it away from the defense. You're welcome to come sit where I'm sitting if you like. I'm trying to work with the geography. Go ahead.

A So Mike ran basically development. We were a development oriented company, particularly back then. We don't do this this way any more, by the way, but at that time, we had it set up that way because of the heavy emphasis on development projects. And Ellen worked with Mike. She's sitting right there. And her background is legal primarily, but a lot of deal orientation and programming negotiations. She did most of TCI's programming negotiations in the old days, and that's one of the reasons we hired her.

Steve Moss was a financial analyst, came from United Cable, a lot of operational finance background. And that was

kind of the unit that Mike used to go in and put together deals with me. Bernie Dvorak was our CFO until just recently.

Q What is a CFO?

A Chief financial officer. He reported to Bill. Bill had me and Bernie. Bill Hudon was assigned primarily to just try to raise capital. We were a very capital hungry business in those days, and so he had something called UI Capital, and Bill was after capital raising. Capital was tough to obtain in this business in the early days because no one knew whether the international business was going to work, so we were doing a lot of private capital raising and we were not public at that point.

Q Would you take a second while you're talking about Bill Hudon and being capital hungry and just describe that. Does this come after you've secured the right?

A Pardon me?

Q Does this come after you've secured the right to invest?

A Yes.

Q Tell us a little bit about what Bill Hudon did and what your capital hungry appetite caused you to have to do.

A Well, the way we did business, by necessity, was we would obtain an opportunity or a right to invest with a partner. We'd go in and sell ourselves and they'd sell us on each other, and we'd just form a venture of some kind. At that point, we would have some seed capital, but we started this business really out of our pockets, and they're not insignificant pockets, the people on our board, some of them are wealthy and we've

had enough money to keep moving along, but to put in the hundreds of millions of dollars that it takes to develop these businesses, they're very capital intensive businesses, we would then have to go out and raised money around that right. And we've raised money from U.S. West, we've raised money from TCI, we've raised money from banks, lending institutions, financial partners. We've been very opportunistic and entrepreneurial in raising money. That's what we've had to do. We've raised over -- at this point, we've probably raised 700 or $800 million dollars.

Q You mean today or at that point?

A Back then.

Q Okay.

A To do the development we had in Europe. I mean, these things cost money, lots of it. So that's what we had to do, and Bill's job, along with Bernie, all of us pitched in on that, but Bill was just 100 per cent of the time focused on finding sources of capital for us to invest, alongside our own. You know, we would control that capital. Capital would be brought into an entity that we would own, and then we would go ahead and go on with the investment.

Q Okay. Why don't you keep working up the chart.

A Bill at that--I guess at this point, this must be after I had been promoted to president and Bill was a CEO. Really, the three of us founded the company, Gene Schneider, my father, Bill and myself, and Bernie was like the first fellow that came on, I think followed maybe by Ellen. You know, we just started with four or five people at that time. But by now, we'd already grown quite a bit. We're two or three years in, I think, and we have some substantial operations going on. And

certainly we'd had the third largest cable company in the United States under our management before and we were certainly comfortable how rapidly we were growing internationally. So by the time we got to Wharf--

Q What was the third largest cable company?

A United Artists, United Cable.

Q And they were under your management?

A Yeah, prior to Bill and I leaving, he was the CFO of that company. I was head of development. Gene was the chairman. Gene was still chairman I think of it then, and if this is '91, we didn't sell the company until '92, so he wasn't really full-time over here with us until after he left United Artists in '92, I guess, or '92.

Q I want to make sure we don't lose this. United Cable becomes United Artists?

A United Artists/United Cable. It was a merged company. We had feeders, we had programming services, we had the third largest cable company at that point.

Q And the merger was in 1989?

A First step of the merger was '89.

Q Second step of the merger was what?

A Merged it all into TCI in '92.

Q And so now all of it's gone and it's all TCI?

A It's all TCI now.

Q And you folks started this thing in '89?

A Bill and I left to start this in '89, yes.

Q And then your father came over full-time in 90-what?

A He started spending more and more time in '91, I think, '90, '91, but I think he was full-time there by '92.

Q Okay, keep going.

A I think I just hit everybody, didn't I?

Q Well, you didn't get to the Chairman.

A Well, that's the Chairman.

Q Okay.

A Chairman started in the business in 1953, he's largely thought of as one of the founders in the industry and very proud of him. He and Bill Daniels began in '53 in Casper, Wyoming, did their first deal together and bought and built that system. He's an engineer by background. The kind of interesting part of the story was that Bill was looking for money to invest. He thought cable was going to be great.

Q Bill Daniels?

A Bill Daniels. Approached my uncle, my great-uncle named Earl Lyle, hence my middle name, and he said the only way he'd invest--he was an oil man here--is if he brought in Gene and Richard Schneider, my uncle and my father, as engineers to help Bill, because Bill didn't know anything about the business, and that's how they got together. So they since then built obviously a couple of good businesses, and Gene

founded United Cable and took that to where we just told you, and Bill is Bill. Bill is still out there.

Q And you call your father Mr. Chairman or dad?

A Usually I call him Gene in the office and call him dad everywhere else.

Q Okay, you can go back to home base. Thank you.

Tell us a little bit about what kind of company it was. Was it formal? Was it informal? Give us a little idea of the atmosphere.

A Well, it's a bunch of people that knew each other well that founded it, including the board. But it came from a New York Stock Exchange background by then, so I'd say it's a mixture of friendly and informal in the sense of the knowledge base you have about your business colleagues. But in terms of the way we approach business, it's formal. We wear ties. You know, we treat it seriously.

Q Do you communicate with each other through memoranda and through requisition forms and department meetings?

A We do more of that now as we've grown. But back then, I think it was more informal in the sense that everyone was travelling. You kind of gathered everybody together when you could and sat down and shared thoughts and what was happening. It was, in those days, less formal. Despite my best efforts to try to get a regime going, events conspired against us. We were travelling so much and so busy with so many projects, that what we tried to do was just get everybody together once a month or, you know, once every two months and sit down and really go through in detail where we were.

Q Do you keep track of your hours for a project and send out a bill to the people you're working with on a project for your time?

A No.

Q Do you--well, do you keep track of the hours at least?

A I don't, no.

Q Does your father?

A No.

Q Did Bill Elsner?

A Not that I'm aware of.

Q And with respect to the other people, did they keep close track of their hours and send out a bill for the amount of time they'd be working?

A Well, we tried beneath the top three or four people to keep track of the hours. We never sent out bills unless it was related to a technical assistance or management agreement we'd signed as part of one of our investments, in which case you'd have to keep some track of people's time and expenditures so you'd accurately, you know, submit those for your partner to see as well.

Q Did any of that happen in the Hong Kong instance?

A Not to my recollection.

Q Was there any billing under the technical cooperation agreement?

A No.

Q Was there any payment under the technical cooperation agreement?

A No.

Q Any keeping track of hours under that agreement?

A No.

Q Now let me show you a chart here. Excuse me one second.

(Pause.)

Q Let me show you a chart. I guess I'll have to have you come back. Sorry. Let me put this chart up on the board here for a second. We don't have it identified. We're going to have to identify it.

I'm not going to move the admission of this chart through you. I'm going to do that with a later witness. But this purports to be a tallying up of hours spent by UIH people on the Hong Kong project. We have another witness who did this and we'll talk to them about it, and I'm going to put an exhibit number on this in just a second. But I wanted to ask you generally if you could step back for a second, how generally do people allocate their time when they're working on a project like this?

A I think -- did everybody hear the question?

Q Yes, I think so.

A My recollection of how we did this then and I think still do is we try to keep a split on a 40 hour week so we have some kind of allocation of people's time and salary. We never bill by the hour or anything, but everybody makes a certain salary on that left-hand column, so that if a person spent " X " per cent of their time on a project, we try to know where it's going just to keep track of what they're doing as well. So I believe that's what this reflects, is some kind of a set of fractions of 40 hour weeks that were added up.

Q Do you know of anybody in your company listed on that chart that worked on the Hong Kong matter that ever worked a 40 hour week?

A I don't think there's anybody in our company that ever works a 40 hour week.

Q Does that mean that they work more or less than a 40 hour week?

A They work a lot more than 40 hour weeks.

Q By an order of how much, generally?

A When you're on a project like this, by an order of possibly double even.

Q But these hours would only be reflective of a percentage of a 40 hour week; is that right?

A Yes.

Q All right. Now, let me ask you, it doesn't show anything toward you, Mr. Elsner or your father; is that right?

A No, it does not.

Q So the time that you would have spent on this project wouldn't even be recorded on this?

A No.

Q Do you believe that the numbers stated there, assuming I can have someone from your accounting department say that reflects your records, do you believe that is accurate, understates or overstates the time that your company spent on the Hong Kong project?

MR. JENTES: Your Honor, at this point, I don't mind him wandering around a little bit on this exhibit, but if we're going to get into that kind of question, I think we ought to have the accountant here so that he really is a little more precise about what this shows.

THE COURT: Well, he's talking about his own time and that of his father's and why it isn't recorded. The objection is overruled.

MR. JENTES: Well, I don't think that's what the question is.

THE COURT: That's the way I understood it.

MR. CHASE: Well, and in addition to that, Your Honor, we're going to have the accountant, but we have to start someplace with this, and I don't want to keep calling Mr. Schneider back.

THE COURT: What is your question?

MR. CHASE: The question would be generally, do you think the time is overstated, understated or accurate on that chart.

THE COURT: Confine it to his own observations and his own time expended.

MR. CHASE: Okay.

THE COURT: And I'll permit it with regard to his father, too, since apparently they were working in conjunction.

MR. CHASE: Okay.

THE WITNESS: I really don't even know how to answer it because there's no time listed for us. So how could it be over or under or anything.

MR. CHASE: The only problem is, Your Honor, I would have to bring him back after the accountant says these are the hours, and I would like to, subject to this chart being admitted, him just saying based on his familiarity with the other people in the project, is this under, over or on the money.

THE COURT: You can call him out of turn for that purpose.

MR. CHASE: Call him back?

THE COURT: No.

MR. CHASE: Oh, out of turn, okay.

THE COURT: I may strike it later if it isn't tied in.

MR. CHASE: Right.

Q (by Mr. Chase) Okay, now do you have the question, Mr. Schneider?

A I think what you're asking me, if I can restate it --

Q Sure.

A -- is whether this would be more or less hours than were likely worked on this project.

Q Right.

A I think it would be considerably less.

Q All right.

MR. JENTES: For the record, Your Honor, because it's

APPENDIX Z

Excerpt from Direct Examination of M. Schneider

February 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2643-2656; Transcript 676-689)

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2643-2656; Transcript 676-689)

A Subsequent to this, yes.

Q Yeah. Did you commit at this time?

A No, I think we took a little bit long--we had to go stand away for a little bit. This is the first time we'd really seen much detail on what they had going on there and saw the level of competence of their people and so forth in any real detail, as I recall. I think, we all went away for a little bit to think about whether we could help these people.

Q Let me ask you to flip over to Exhibit 258, and I'm just going to ask you one question from that. These are Mr. Fung's notes of that meeting, and I don't think it's in the jury book. It's June 17, 1992. I'm simply going to ask, down at the bottom of that memo where it says "financial" and it says "10% stake appears acceptable", do you see that?

A No, I don't yet.

Q It's on the bottom of the second page.

A Oh, second page, I'm sorry.

Q Yes?

A Yes, I see it now.

Q All right. Were there discussions about the percentage interest that UIH would have?

A Yeah. There had been discussions since the first time we met about the kind of level we wanted to have. And, we were always pushing for 20 or 25 and they kept say 10.

Q All right. Now, flip over to Exhibit 262, please? 262 is a letter of June 19, 1992 from you to Mr. Ng. It's in the book.

A I see it.

Q And, I'm going to put part of it up on the touch screen here. Now, this is your letter to Mr. Ng on June 19, right?

A Yes, it is.

Q I want to call your attention to this language in the letter. "We would be willing to devote an operating person, financial analyst, and engineer to work with your team to financially model and develop the final franchise application. We can have these people available to you in Asia by the end of July 1992. If we win the franchise and go forward, we would like their time and efforts contributed toward our equity contribution." Do you see that?

A Yes, I do.

Q Now, was this in your mind your acceptance of their proposal that you come in and help them?

A Yes. I believe at this point we were agreeing to come in and help them in consideration of having an equity ownership.

Q Now, did they, in turn, read your letter and say, great, come on down, or did some time lapse?

A I can't recall specifically, Jeff, but I think after some reasonable amount of time, they accepted our people coming.

Q All right. I want to show you a document that's from Wharf's internal files. Is Exhibit 235 in your book there? I don't believe it's in the jury book.

A I don't see a 235 in here.

Q Then, let me hand you a copy.

A Let's see, 233 and then 237.

Q 235 is multi-page composite--

THE CLERK: It's missing out of--

MR. CHASE: Yeah, it's in the larger set. It's a multi-page composite of documents; Wharf Communications Investment Limited coordination meetings notes. I'm going to hand him just the portion that he needs to see because I'm not going to ask you about all the pages.

Q (by Mr. Chase) I'm going to ask you a question relating to their coordination meeting notes of June 22, 1992, and that's from Exhibit 235.

A Thank you.

Q All right. Now, Mr. Schneider, I'm putting up on the screen the part that I want to focus on here. It's June--it's a long exhibit. It's the June 22 portion. I'm focusing on the portion--these are the Wharf internal meeting notes, the portion on UIH. Now, this is three days after your letter. Now, have you ever seen these notes before?

A No.

Q Okay. I'm going to ask you a question that relates to what's said in these notes and I understand you've never seen them before. EF--who we understand to mean Emil Fung, and I have no problem proving that--said that UIH would like to send staff to Hong Kong right away to work in the areas of marketing, operations, and engineering and they wanted these staff salaries to be incorporated in the project cost. Do you see that?

A Yes, I see that.

Q Do you think that's a fair summary of what it is you were proposing?

A Yeah, we were proposing that as part of our 10 %, we get consideration for the time and money spent for the people put in.

Q All right. Now, they didn't get back to your right away, but this goes on to say EF to indicate to UIH that the deal is not finalized yet and also the staff issue should not be addressed until licensing framework if finalized at the end of June. Do you see that?

A I do see that.

Q All right. Did you hear affirmatively back from them before the end of June?

A I can't recall.

Q Did you hear affirmatively back from them during July?

A I believe we must have because we sent the people in somewhere around there, as I recall.

Q All right. Do you remember having discussions with them about the fact that you would be sending the people in and that you would be treating the costs as part of the project?

A Yes, I do recall that.

Q Could you describe that for us, please?

A Well, at some point, thereabouts--I can't give you the precise date on something this long ago--but, around that time, they called and told Mike Fries and me that they were willing to accept our proposal in the sense that we would contribute the people and the time and the effort and they were ready to start working together.

Q All right. Look over, if you will, please, at Exhibit 258. I'm sorry, not 258; I've got the wrong one. Look over at Exhibit 309, I'm sorry, and I do not believe that's in the jury book. This is an internal Wharf memo from Emil Fung to Stephen Ng of July 23, 1992.

A I see that.

Q Okay. Now, do you see where that indicates--now, this is from Mr. Fung to Mr. Ng. You see where it indicates that, "I plan to have Mike and Bill sit down with our cable unit heads between August 3 to August 5 to be filled in on our strategies following the framework announcement. Steve Moss and Blake is available for three weeks of the month to help us with our number crunching and become part of our project team resources. I think we should take them up on their offer. If this arrangement is acceptable to you, I will start to put together an agenda and arrange for suitable office premises to house the UIH team." Do you see that?

A Yes, I do see that.

Q Is this roughly in the time frame, as you recall, that they accepted your proposal?

A Thereabouts, yes.

Q All right. Now, I want to look down to the next portion of this memo where it says, "As for the conference call, we will need to confirm how this team will be compensated. Sonjia is of the understanding that this process will be part of their due diligence efforts, but you may recall that Mark's letter envisioned some transfer pricing." Do you see that?

A Yes, I do.

Q What is transfer pricing?

A It means that we would--in consideration for equity contribution, devote the people on the time and the resources rather than just strictly cash.

Q What do you mean by that; in consideration for equity contribution?

A I mean that if we expend $500,000 of our time and people, that would count toward our equity contribution toward the venture.

Q Did Wharf accept this?

A Yes, they did.

Q And, what was the agreement in case they didn't get the license or in case you chose not to invest?

A I think it ultimately was that we lost our money.

Q Was that acceptable to Wharf?

A I'm sure it was.

Q Tell me what you committed to Wharf in August then?

A We committed some specific personnel and I believe they're listed; Paul Barth, Steve Moss, Blake Williams, Bill Pittman. We committed those people to come over and really start digging in and living there. I'm not sure Paul ultimately stayed there that long, but he was initially helping. Then, we also committed to get our general expertise, you know, that is considerable and was at that time, as well, in behind them on all of their other bigger problems; their management information systems, their technical design, their programming plan and services, their operational plan in general, their business model. Specifically, we basically agreed to come in and start putting together a full and comprehensive business plan that we would be able to stand behind as something that could be successfully implemented.

Q Okay. Let me ask you--I'm going to instruct your attention on a jury instruction in this case.

MR. JENTES: Your Honor, I don't believe it's appropriate to bring out the jury instructions for the witness, I don't think.

THE COURT: I don't know yet. We'll have to see.

MR. CHASE: I'm going to frame my questions to you, Mr. Schneider, in terms of what this instruction says. Why don't you come down here and use this microphone next to Ms. Spangler so we can all do this. The record should reflect that I'm showing Mr. Schneider Jury Instruction 47 defining a

joint venture. I'm looking for a suitable way to do this. I'm overpowered by the exhibit.

(Pause.)

Q (by Mr. Chase) Mr. Schneider, I'm showing you the Jury Instruction 47 on the definition of a joint venture and what I'm going to ask you is as of August 1992 when you committed your people, did you believe that you had committed money, labor, and skill to this venture?

MR. JENTES: Your Honor, I still object to the use of it in this way.

THE COURT: It's overruled. The objection is overruled.

THE WITNESS: Yes, I did believe we were committing those things. We were actually doing do.

Q (by Mr. Chase) What were you committing?

A We were committing skill, labor, expertise, reputation, all of our intellectual ability in this business.

Q Who were you committing it to?

A To Wharf.

Q For what purpose?

A To, first, win the bid for the cable license; then, ultimately, the most important thing is to make it run right. So, you develop a business plan that could be executed properly.

Q And, at the time you did this in August, did you believe that there was an agreement to share in the profits or losses of this venture?

A I did, yes.

Q And, if the costs that you put into this thing were not recouped in terms of capital, did you ever get them back?

A I didn't believe we would, no.

Q So, if a license wasn't granted, you lost your money?

A That was the nature of my proposal to them, yes.

Q And, if you didn't invest, you lost your money?

A That was also the result if we didn't win.

Q And, if you did invest and the project didn't make money, you lost your money?

A That's right.

Q And, did you believe in August 1992 that you were conducting your company showing cooperation in this venture?

A Yes, very much so.

Q Okay. Let me go back to NYNEX. At the time you were doing this with Wharf, what was the situation as you understood it with respect to NYNEX's participation?

A Well, that changed pretty dramatically and often. There was a time during the summer that I recall when they weren't

interested. Then, there was another time somewhere in the summer or early fall where they were back interested.

Q All right. Let me try to be more precise on the timing here and as to your understanding.

MR. JENTES: Your Honor, I object only in the sense I'd like to find out what is the basis for the understanding.

THE COURT: All right.

MR. JENTES: Did he have conversations with NYNEX?

THE COURT: All right. That's fine.

Q (by Mr. Chase) Well, let me come about it a little bit differently, Mr. Schneider. Let me ask you to look at--this would be--well, let me get the exhibit number. This is a July 20, 1992 letter from Mr. Fries to Mr. Fung and I believe it is in the jury book. 304. Could you look at 304, please?

A I am looking at it.

Q Now, this is Mr. Fries writing to Mr. Fung, and on the second page of the letter, it indicates--well, that's not the second page of the letter. It indicates, "NYNEX Telecommunications. Sonjia informed me that NYNEX is re-evaluating the Hong Kong market based upon the proposed changes in the broadcasting law. It appears that they may have concerns about the ability of an entertainment based network to support the ultimate construction and operation of a telecommunications system." Do you see that?

A Yes, I do.

Q Okay. And, I'm going to show you another document relating to NYNEX. This is a Wharf internal document and this is Exhibit 314. I believe it's in the jury book. It's dated July 25, 1992. It's a Wharf Communications Investment Limited weekly report by Emil Fung. It states, "Wharf Cable Partners. Strong support maintained by UIH and Fox. Discuss potential pullout of NYNEX. No real concerns. UIH to arrive the week of August 3." Do you see that?

A Yes, I do.

Q Tell me your understanding at that time period of what the situation was with respect to NYNEX and how that influenced your thinking?

A Well, I understood that they were flaky. I had heard that from our people. I had heard it from Wharf, I believe, at that time.

Q What word did you use?

A Flaky; meaning they weren't solid. We weren't sure they were really in this project.

Q What did the Wharf people tell you?

A The same thing.

Q And, did they say that there's a potential pullout?

A I don't think they were that strong about it. I'm not sure we knew that there was a potential pullout. We just knew that from the way they were behaving--there was direct contact between some of our people and NYNEX's people. You could tell their body language and some of the things they were saying were not the same things we were saying. We were

very much getting behind this project, you know, devote all of our energies to it, and they weren't acting the same way.

Q Well, did anyone tell you at that time that if NYNEX pulled out, then you wouldn't be able to have your investment right?

A Absolutely not.

Q Did anybody tell you anything about how this potential pullout of NYNEX would relate to your investment right?

A I don't recall there being at this juncture. Later, we had some discussions on what would happen if NYNEX left. I don't think there was a lot of discussion at this early juncture as to what exactly it would mean. It didn't concern me either way. It was if they were in, they were in, just as I told Stephen in Singapore, and if they were out, they were out. We were indifferent.

Q Did Stephen or anything else from Wharf express to you their concern that you would lose interest because NYNEX was losing interest?

A Later on, there was some concern about that. But, when NYNEX actually did pull out formally, there was extreme concern that we would follow. But, that was later on.

Q Who expressed that concern?

A Stephen.

Q And, what did he tell you in that regard?

A He told me--and, we're jumping forward; is that all right?

Q We're jumping forward to roughly when, do you remember?

A January of '93.

Q Okay. What did he tell you?

A Or December of '92, right in there. He told me that NYNEX's board had not approved our investment. In fact, NYNEX would not be a participant.

Q Did he indicate any concern about what UIH would do?

A Yes, he did.

Q What did he say?

A He said does that affect your willingness to stay with this? I said absolutely not. As I've told you every time we've ever talked about this, they're not somebody that concerns us either way at this stage of the business.

Q During the entire time you were dealing with Wharf up to October 1993, was it ever expressed to you that a condition of your right to invest was that NYNEX or another telephone company also invest?

A Absolutely not.

Q And, if that had been expressed to you in the summer of '92 or any time in '92 or '93, would you have committed your company?

A Absolutely not.

Q Why not?

A Because I can't make deals based upon third-party contingencies that are beyond my control. There's no possible way that we would enter an agreement where a third party could take away my right to be in it, you know, purely on their own whim. It's just not good business; not sensible.

Q All right. Let me jump you to another subject here for a moment. I'm going to ask you to look at Exhibit 458. I do not believe that's in the book. It's in your book, Mr. Schneider; I don't believe that's in the jury book.

A 458, Jeff?

Q Right. Are you there?

A Yes, I am.

Q 458 looks like a memo from David D'Ottavio to Bill Elsner of September 14, 1992. Now, let me ask you, first, do you recall being in Hong Kong roughly at this time?

A Sometime around there, I was in Hong Kong. I remember being there in September. Now, do you remember an issue coming up with respect to Wharf wanting more financial information from UIH?

APPENDIX AA

Excerpt from Direct Examination of M. Schneider

February 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2580-2589; Transcript 613-622)

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2580-2589; Transcript 613-622)

the largest single purchaser of their boxes for a number of years, until TCI started becoming an addressable system. For a long time, a lot of companies didn't use boxes. They used what were called taps outside of the home. We'll just confuse everybody with that. But boxes were a way of doing new services from the headend, plus putting the scrambling in, and Jerrold made the best ones, and they broke through on addressability, they were really the first two-way box manufacturer. So we had a very strong and long relationship with them.

Q Did your company deal with Jerrold on Wharf's behalf in connection with this Hong Kong system?

A We did extensively, yes.

Q Okay. We'll get to that as we go. Are you finished with your picture?

A Do you have anything else you want me to get at?

Q Can I have my pointer back?

A Here's your pointer.

Q Now, I want to go back and start to focus in a little bit more detail on what you were doing back in 1991, '92 and '93 for UIH, and you described your responsibilities as doing deals and overseeing systems. Let me talk to you about the deal making aspect of your business. Could you describe that for us?

A Well, we were a new company in '91. We left -- United Cable basically was merged into United Artist in 1989, and Bill Elsner and I decided at that time, although we stayed on the board of United Artist, that we weren't excited about working there as much as we were about the international business, so we started United Cable in I think May of ' 89.

Q You mean United International?

A United International in May of '89. And at that time, we were a private company and we had three primary assets in Europe, but we were working hard to develop more relationships worldwide. Our believe was then and it still is now that the growth in this business, all forms of phone and cable, is out there in the rest of the world, and it's a much more limited market left in the U. S. So we were pursuing strategic relationships and looking for places to invest and expand aggressively in Asia, aggressively in Latin America, aggressively in Europe.

Q Now, what kind of things did you personally do, though, when it came time to negotiating a deal? Just -- I'm talking about in general now.

A Well, I was pretty much the point person. I did the travelling. I had a couple of people that were close to me that stayed with me, Mike Fries and others, Ellen was involved back then.

Q Ellen Spangler?

A Ellen Spangler, yeah.

Q Okay.

A Still is involved. I would go out and I would try to meet people in different countries to see who were interested in the business, and establish relationships with them with the idea that we would bid for franchises or acquire networks or whatever the different business situation allowed us to do. You know, each country sort of has its own framework of regulation and state of development as you go into it.

So in some places, there's nothing. You go in and you're really looking for somebody to start from the very beginning with you. In other places, there might be two or three people or entities that have started into the business, so you're going to meet them and trying to see where they're taking the business and should you form a relationship there or find someone else in the country that would be a good partner to support acquisition or further development. It's just a lot of ground breaking and sort of pioneering work at the first step. The second step is you meet --

Q Let me interrupt before we leave the first step, because you're strangers in these countries -- not strangers, but you're the foreigner; right?

A Yeah, by nature.

Q And do you look for people to be your local partners, or do they look for you? How does that work?

A Comes both ways. We've had numerous approaches from the outside, and then we'll also go and visit and try to see if there are others that are superior to whoever might have approached us. It kind of comes both directions.

Q As a general matter, what does the local partner bring to the table?

A Usually political strength, business presence and capital.

Q And as a general matter, what do you bring to the table?

A Expertise in the business, deep knowledge and ability to manage, and capital.

Q All right. So I'd like you to proceed a little bit telling us how you make a deal. You've identified now a place and maybe you've identified a partner. Go ahead.

A Well, okay, let's pick a country, Israel, it's a good way to look at it. We had three or four groups approach us saying that Israel is going to start franchising for their cable licenses. Are you interested in being our partner? And we'd meet them, we'd shake hands, we'd say, well, let's talk some more, and then we'd do some investigation on the ground. We usually retain a legal firm over there. We might call the State Department and get some more information about what they know is going on, or the Commerce Department in the U.S., start doing our homework on the country, demographics, broadcast systems, video stores, VCRs in the homes, start putting together a lot of information. Then we usually take a trip, and we go meet with the people that had come to see us, and we'd probably schedule to meet a lot of other people that we'd been advised might be important in that market. After a period of time, you start to get an idea of who the winners and losers are likely to be, and so you try to set yourself up with a winner, and that winner will have the attributes I mentioned before, strong political and business presence, good working knowledge of local customs and capital.

Q Okay. And what kind of relationship do you try to establish then?

A Partnership.

Q Okay. And what do you do to get that to happen?

A You sit down and discuss it and establish whether or not you want to work together, is the first step. And then once you agree to do that, there are many steps.

Q Now, when you say partnership, do you mean technically it is a partnership as opposed to a corporation as opposed to a joint venture, or do you mean partnership in the sense that you're just going to share?

A I mean that generically, that you're going to share the risk and the reward of the business. It can be formed. We've had partnerships, we've had joint ventures that are formalized. We've had corporate relationships. We've had many different kinds of forms of relationships, you know, formally over the years. But I'm generically using the word partnership.

Q Do you begin providing services or giving value added to the project before you've secured your right to invest?

A No.

Q Well, could you described that? Do you do anything before you've secured your right to invest?

A Well, we'll do some things. I'll change that a little bit. We'll try to show that we know what we're talking about. We'll put some rather superficial analysis together about the market and give some thoughts on how we'd like to do business. We usually try to talk enough to each other that, you know, you get a meeting of the minds about what's really going to happen in the marketplace and how you might attack it together. You get to the point where you're comfortable that the other person or group sees the future the same way you do. So you are exchanging some information, But do we do any real work?

Not really. Not any that's for their behalf, but some for ours perhaps.

Q Why is it important to secure your right to invest before you do the work?

A Well, because that's the most important thing you're bringing, is the work.

Q Now, let me jump ahead for a second. Ultimately, are these relationships documented?

A Generally.

Q Okay. Are they always documented before you start to provide your services and give your work?

A No.

Q Why not?

A Well, for many reasons. The usual reason is that you're in a fairly complicated situation and documentation takes a long time, and you have to start acting soon or immediately or you lose your opportunity together, both of you will lose it.

Q You say both of you?

A Your partner and you.

Q What do you mean by that?

A Well, let's say the franchise, the bid is due in April of this year and you make an agreement with somebody and you're starting to document. You've got to go now, though, on the work. You don't have time to wait until all the lawyers catch

up with you. So you often are doing work at that point with an understanding you're working together orally.

Q Now, we're going to ask you specifically about the Hong Kong deal as we get to that, but let me ask you about other deals. Have you done other deals where you expected documentation, but you went forward with providing services or funding before the documentation was completed?

A A number of them.

Q Could you give us some examples, please?

A Actually, the deal that formed this company was done on a handshake. When we bought the Blockbuster video store

rights, the Israel, Norway and Sweden properties from TCI, we did it on a handshake with John Malone. That handshake was upheld while we spent time, effort and money over the course of almost a year, I believe.

Q When you say it was upheld, did you have to sue them to enforce the handshake?

A Of course not.

Q Okay. When you say upheld, you mean he just followed through on his word?

A Yes.

Q And you trusted him and provided the services and the money?

A Of course.

Q Okay. Can you give me some other examples?

A I can think of another time when I was working for United Artists prior to forming this company where Paramount, MCA and United Artists had agreed to form a joint venture in England and throughout Europe with AMC, another -- it's a movie theater project, not a cable project, and the documentation for the three partners, which was Paramount, MCA and us, wasn't formed for probably 18 months. Meanwhile, we all expended energy and time and effort to get the deal done and knew in fact we were in a joint venture and a partnership.

Q Well, how is it you know in these circumstances you're ever going to get the deal documented and done?

A You rely on people's good faith representations, and you start working together and you know that both of you have committed effort and are now giving consideration to one another and, therefore, you have a deal.

Q And is this something that's not uncommon in your business?

Mr. Jentes: Object.

The Court: Overruled.

The Witness: Well, it's not uncommon in our business. Another example that's typical are the equipment suppliers. We do in the hundreds of millions of dollars of business with them over the years, and I would bet a great deal of it -- I know a great deal of it's done undocumented. We have price terms, we have financing terms, i.e. we have six months from delivery to pay. We have numerous terms that are set orally, sometimes get on a piece of paper, sometimes don't. Both sides will

effectively live up to their bargain, and I can think of two instances in our company today where we're under that circumstance, one with Jerrold and one with Amphonall.

Q (by Mr. Chase) Okay. Now, in this case, you were doing business in the Orient. Did you have any reason to believe that the trust and handshake was any less significant in the Orient than it was in the other people you've dealt with?

A Well, no. And, in fact, we were led to believe that the style of doing business over there was more or less honorable. And one reason we had to believe that was the formation of UIH Asia itself was done on a handshake with the Ng family.

Q Explain that, if you will.

A Clive Ng approached us in Denver and said I know everybody and everything about Asia and you should be our partner. Come meet my father. We did fly there a few of us and met his father, and they introduced us to a number of people in Singapore and in Taiwan and in other places, and seemed well connected. We basically agreed to a relationship, shook hands on it, spent months before we ever got it documented, working together. We certainly felt bound, and I'm sure they did, too, on that joint venture being an effective partnership that both would be participating in. In fact, they advised us often that you don't push too fast for a written contract in Asia.

Q Could you do your business if you had to wait for lawyers to document everything you did?

A No.

Q Now, in addition to doing transactions or negotiating

APPENDIX AB

Excerpt from Direct Examination of M. Schneider

February 21, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2659-2670; Transcript 692-703)

Excerpt from Direct Examination of M. Schneider
February 21, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2659-2670; Transcript 692-703)

phone and again face-to-face in Hong Kong as to what sort of process they had to go through internally. And, on each occasion--

Q Can you remember a face-to-face discussion in Hong Kong with Mr. Ng where you talked about internal process?

A I certainly can.

MR. JENTES: Okay. Now, may we find out where that was and--

THE WITNESS: I'm about to tell you.

Q (by Mr. Chase) Tell us where it was?

A That discussion rising largely out of the process he was describing, he said to us during these meetings that I have to go and talk to my board about this bid, and I have to lay out exactly how we're going to submit this to the Hong Kong government. There's a lot of sensitivity here because of--you have to remember, they had a very embarrassing situation occur when they won it once and the thing had collapsed. So, they were being very careful to set this thing up to win. It was a tremendous amount of local prestige, we perceived anyway, on them winning this thing internally. There was a lot of pressure on Stephen, I believe, to win. He said I have to show the board how we're going to lay this out. And, I said, well, that's fine, Stephen. And, he said, well, I'm a little bit worried about how your balance sheet works. And, I said to him during the meeting the first time, I said, Stephen, we're willing certainly

to sit down with your board and show them our asset base in detail. Just sending our balance sheet down will not be very exciting for them or anybody else, but if you see the businesses we actually own, it gets quite exciting, and that's the reason we're together. And, he understood that. I then asked him eyeball-to-eyeball, specifically, I said, Stephen, do you have any issue, at all, of board approval on offering us this investment? And, I remember exactly where I was standing when we had the last discussion on it.

Q Where were you standing?

A I was standing on the landing outside of the business area at the Shangri-La Hotel and I said I'm going to commit these people and spend this money on the understanding that you have full approval to make this deal at this point. Now, we don't need approval to make this commitment; I assume you don't for this kind of a commitment nor to offer the interest in the business. And, he said I absolutely have authority to do this. I've discussed ownership with the board. I'm authorized to offer you this amount of 10, NYNEX another amount, and a little bit for Fox if they so chose to come in, or a third-party programming partner. He said I have authority for that. What I'm talking about now is needing to show them the whole package and make sure the board understands what we're submitting. So, I made absolutely certain at that point that Stephen was committing to the 10 % floor.

Q If you thought he needed further approval from his board or anyone else before he could commit the 10 %, would you have committed yourself in August?

A No.

Q Would you have awaited approval?

A Yes. And, I said let's go talk to your board and get approval.

Q Why?

A Because I can't--the size of a company we owned then, and still own, still would never do this any differently. I can't afford to spend that kind of money and time and effort and all of my resources in a region on something that's contingent upon someone's board approval.

Q All right. Let me show you a draft of a letter of intent because drafts have been talked about here. Let me ask you to look at Exhibit--this is a September 19, 1992 letter of intent. I'll put it up on the screen and tell you the exhibit number in a minute here. Well, I thought I would. Look at Exhibit 493 and I do not believe that's in the jury book, but I'm going to show you the language I want to focus--oh, yeah, I think it is in the jury book. I'll show you the language I want to focus on. This is a draft letter of intent of September 19, 1992. I want to focus you on the language simply up at the beginning part of the document. It's got a lot of handwriting on it.

A I don't think I have this, Jeff.

Q Pardon me?

A I don't think I have this document.

THE CLERK: That's 498 on the screen.

MR. CHASE: 498?

THE CLERK: Yes.

MR. CHASE: Oh, okay. Then, it's 498. You're right, 498; I'm sorry.

THE WITNESS: 498.

MR. CHASE: I've got a handwriting issue. No. No, it's 493.

THE WITNESS: I've got 493 in here.

MR. CHASE: Well, it should be 493. Look at 493.

THE COURT: You've got 498 on the screen.

MR. CHASE: I know it is.

THE COURT: Okay.

MR. CHASE: I know it is, and that's wrong. It's 493.

Q (by Mr. Chase) Look at 493.

A Okay. I've got 493. It's a letter; a Dear Emil letter.

Q Right. Look at the attached draft--the letter of intent attached draft. Do you see that?

A Yes, I do.

Q All right. Now, in the first full paragraph there and this is the language I've got up on the screen, it talks about all requisite consents and authority including, where necessary, approvals of shareholders and their boards of directors. Do you see that?

A Yes.

Q Now, as of the time of this drafting process and as of the time you were talking to Mr. Ng, did you understand that they needed these approvals to commit to you?

A No, I understood the opposite; they didn't need the approvals.

Q All right. And, do you know that any of these letters of intent in this period of time ever had different language than "where necessary"?

A I can't specifically recall right now.

Q Now, you knew NYNEX needed board approval, didn't you?

A NYNEX, I believe, needed board approval to commit to their 20 % because they told us.

Q But, you didn't believe Wharf needed board approval?

A No, that was why we specifically discussed it with them.

Q All right. Now, let me ask you--

A Nor did we need board approval for this kind of a commitment.

Q You say you were in Hong Kong in mid-september and you had these discussions with Mr. Ng. Did you leave Hong Kong within a few days of that?

A I believe I did.

Q Okay. When you left Hong Kong, did you know whether there--did you understand that there were any disputes or

outstanding disagreements with respect to your transaction with Wharf?

A No, I felt we'd come to substantial agreement on all important points at that point.

Q Did you come to learn of a proposal regarding a Technical Cooperation Agreement?

A Yes, I did.

Q Tell us when and how you heard of that?

A My recollection of this is I had gone back to Europe for some other business and that Mike Fries who worked for me called up and started to explain this change in approach that was sought by Wharf in using something called a TCA or a Technical Cooperation Agreement.

Q What did Fries tell you?

A He told me that Wharf's concerns regarding NYNEX's noncommittal nature and the possibility of red flagging investment capabilities in our balance sheet led them to a different approach on the bid whereas they would use this Technical Support Agreement as a way of showing the commitment of the partners without getting in to the details of their investments.

Q Were you comfortable with that?

A No.

Q Why not?

A Because it wasn't what we'd been agreeing to.

Q Well, what kind of direction did you give to Mr. Fries?

A I initially said that we weren't interested in it.

Q Did you change?

A I was persuaded after talking to Mike at length and Stephen at some length that they weren't intending to change what we'd been discussing doing and that they were willing, they told us, to add language either to the bid or to the TCA in some fashion or in a side agreement with us that would express our investment opportunity in writing.

Q You had this discussion with Mr. Ng?

A Yes, I did.

Q At the latter part of September 1992?

A Thereabouts.

Q Telephone discussion?

A Telephone discussion.

Q What did he tell you?

A Told me that he hadn't changed his mind, at all, on how he wanted to do this. He was worried about the two things I just mentioned to you; being before the government and causing perhaps some trouble on the bid negotiation. And that, therefore, if we would be cooperative with this, he would assure us in writing that we would have some form of an agreement that made sense like an option or something expressing a real intent that would satisfy me and the other people in our management.

Q And, this would be after the bid submission?

A I think, at that time, he was saying it would be concurrent with the bid submission.

Q Did he give you something concurrent--

A Something--yeah, if he put the bid submission in with the TCA, then he would concurrently give us something.

Q Well, what were you expecting? What did you think you were going to get in terms of a writing at this point?

A I expected there to be language in the TCA or in the bid submission or in a separate piece of paper that confirmed our general understanding that we were intending to invest in the project at approximately the level we intended to invest.

Q And, did Mr. Fries then indicate to you that he had seen a draft of the bid submission and it had this kind of language?

A Mike assured me that he had seen that, yes.

Q Okay. Did that comfort you in terms of the fact that your investment would be preserved?

A It gave me quite a bit of comfort, yes.

Q Did you authorize Mr. Fries then to sign the Technical Cooperation Agreement?

A Yes.

Q Okay. Now, the Technical Cooperation Agreement is Exhibit 531. Do you have it in the book there?

A A different book here, I think. I have it in front of me now.

Q Now, based on your discussions with Mr. Ng, did you have any understanding as o whether this agreement was going to be used if you didn't become shareholders?

A I did have an understanding.

Q What did he tell you?

A It would not be used.

Q What would it be used for?

A Largely, as a way of assuring the government that hey had adequate expertise and support standing behind their business plan and their bid.

Q In the event you elected to exercise your option and buy an interest in the project, would you expect something like the TCA to be your management agreement?

A We generally have management agreements where we invest and we talked and I think they, in concept, agreed that something like that would be executed with us.

Q So, was it your understanding that when you signed this that this or something like it would be services you would ultimately be providing?

A Yes.

Q And so, did you feel in your mind that you were tricking or fooling the Hong Kong government?

A Not at this point because I thought that the Hong Kong government was also going to clearly understand the investment right. I was extremely concerned shortly thereafter when language did not appear confirming the investment right and I told Stephen that.

Q Language where? You mean in the bid?

A Yes.

Q Did you see the language in the bid; the actual final language before the bid was submitted?

A I don't believe I did.

Q Okay. And, when you saw the language that was submitted, what was your reaction?

A Dismay and concern.

Q Could you explain that?

A Well, the language we were told that was going to be in there confirming the investment right was not in there. And, what we were really standing on nakedly at that point was the TCA which both of us had said had no effect. In fact, the TCA by its terms, I think, didn't even kick in until after the license was awarded. So, it had no practical effect. And, we didn't think that was what we'd been discussing, at all.

Q Did Mr. Fries indicate to you that the language in the bid submission was different than the language he had been shown?

A Yes, he did.

Q Now, let me read to you the language that was in the bid submission. I'll put it up on the screen here for a minute. This comes from Exhibit 549. This would be the corporate and finance section of the bid submission and I'm going to put it up on the screen. The language I'm going to focus you on is under ownership structure where it says, "Wharf will initially have 100 % shareholders in Cable Network Communications Limited, CNCL, the parent of Wharf Cable Limited. If Wharf Cable is successful in its license application, Wharf will consider the introduction at the appropriate time of NYNEX, UIH, and other strategic partners as co-investors to purchase up to 40 % of the shares of CNCL." Do you see that?

A I do.

Q Is that the language that bothered you?

A Yes.

Q Why?

A Because it's completely subjective to Wharf.

Q Did you have an opportunity to discuss this with Mr. Ng following the submission of the bid?

A Yes, we did.

Q Can you describe that opportunity? Where and when did it occur?

A My recollection is once by telephone we discussed it and I told him it was not appropriate nor acceptable.

Q What did he say?

A He said we'll resolve it when we get together in Colorado.

Q Did you get together in Colorado?

A Yes, we did.

Q When was that?

A In October of that year.

Q And, looking up at the time line here, if you could, and you've got your little version there--

A You took away my time line. Can I have my time line back? Thanks.

Q Would that then be your meeting of October 8, 1992 with Mr. Ng in Denver?

A That would be the meeting, yes.

MR. CHASE: Your Honor, this is going to be a lengthy portion of the examination and it's probably as good a place as any to recess for the noon hour.

THE COURT: Okay, for the weekend.

MR. CHASE: Pardon me?

THE COURT: For the weekend, right?

MR. CHASE: So be it.

THE COURT: I hope everything goes well for you and your family. Please, drive carefully. Don't discuss the case or

APPENDIX AC

Excerpt from Redirect Examination of W. Elsner

February 24, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2765-2766; Transcript 798-799)

Excerpt from Redirect Examination of W. Elsner
February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2765-2766; Transcript 798-799)

points. So, I'd ask you if you would get that handy, please. I think both of my points are going to be in Volume II.

A Okay.

Q Now, in cross-examination, Mr. Jentes was reading from your deposition where you testified as to the terms of the October 8 option. Do you remember that?

A I do.

Q Okay. Now, he didn't read to you from Page 310 that added this term. I'm going to read the question and ask if this was your answer.

MR JENTES: Object, Your Honor; I don't think is the appropriate use of the deposition.

THE COURT: Objection is overruled.

Q (by Mr. Chase) On Page 310, Line 13, "Did you discuss"-- are you there?

A Yes, I am.

Q Okay. "Did you discuss with Stephen Ng in the October 8 meeting how or whether you would be compensated for secunding those individuals?" Answer, "Their costs were to be rolled into the cost of our equity investment. We would receive credit for that cost."

Now, was that question asked and was that your answer at that time?

A Yes, that's correct.

Q All right. Now, Mr. Jentes also asked you questions about whether you reached final agreement on October 8, but not before. Do you remember that?

A Yes.

Q Now, did that relate to the option agreement?

A Yes, it did.

Q Had you reached agreement on another kind of deal before that?

A Right, and it's come up a number of times. The nature of our investment was going to be different prior to the September bid when the thing changed. The change was when NYNEX couldn't go to their board in time, Wharf wanted us to sign a Technical Cooperation Agreement. So, that ownership arrangement where we were going to actually be investors and listed as owners at the time of the bid was changed to the option that was struck on October 8.

Q So, those specific option terms are October 8 terms; right?

A That is correct.

Q And, prior to that, you had the different kind of agreement that you've described?

A That is correct.

Q All right. Now, I want to take you through some boards. I'm going to try to be quick with this, but I want to go through some of the same exact boards that Mr. Jentes went through and ask you a few different kinds of questions.

APPENDIX AD

Excerpt from Cross-Examination of W. Elsner

February 24, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2696:06-2698:16; Transcript 729:06-731:16)

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February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2696:06-2698:16; Transcript 729:06-731:16)

Q Now let me turn to the meeting in October of 1992 that you had when Mr. Ng visited Denver.

That's the meeting where you, at least, say that you got Mr.--well, let me rephrase that.

The meeting on October 8, 1992 is the meeting where you say that you agree to "commit the troops" in return for Mr. Ng giving you a "right to invest 10 per cent into Wharf Cable, "is that correct?

A I tried to be real clear. I mean, we already had people involved in the project, and people performing an awful lot of services. What we agreed to do was to have Pittman, Moss, and Williams actually take temporary operative roles within Wharf Cable, so we did--we continued to do what we were doing, plus, we incrementally agreed to provide more than we already had, even, at that point, so, yes, we agreed to do that, and Stephen gave us the right to invest.

Q Now, this right to invest that you've just referred to, is that the same thing as an option?

A Yes.

Q Was it also the same thing as a joint venture?

A You know, I don't know that I could tell you what the legal definition of a joint venture is, in that context. Did it presume there was one? Sure, but did it, I mean, I don't know. I can't tell you--I can't answer the legality of that.

Q Okay. I'm not asking you for your views on the law. I recognize you're not a lawyer. I'm just asking you as a businessman whether or not this right to invest and option was, in your mind, the same thing as a joint venture with Wharf?

A We had the right to participate, the right to invest and own 10 per cent of that project. We didn't have to exercise that right, so I don't know whether that would be a joint venture or not.

Q Okay. Now, on October 8th of 1992, that was the first time that UIH had this agreement on all of the terms for UIH's right to invest in 10 per cent of the equity of Wharf Cable; isn't that correct?

A We knew what the terms were going to be for our investment in September, whereby we would invest, and if we couldn't keep up with the capital requirement, we would be diluted.

And then, as I told you, because of the situation with NYNEX, Wharf asked that we not do it that way ; that we go into the TCA, and our right to invest would come after that, and so we clarified, I mean, this was a new formulation. It wasn't the first time that we had ownership outlined. It changed its form. Now it was the option, and that option was specified with all the terms on October 8th, yes.

Q I'm sorry, you went around the barn there. When you came out, the answer to my question was, yes, this was the first time that you had this agreement on a right to invest?

A It's the first time we had the option to invest. When we were putting the bid documents together, we were putting them all, I mean, the work that we were putting for the bid document

was being done because we were going to be investors prior to the submission of the bid.

Okay, that was decided on Wharf's part. They did not want to do it that way. They switched it to a different manner, and, on October 8th, we received the--we clarified the option to invest.

APPENDIX AE

Excerpt from Redirect Examination of W. Elsner
February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2785-2789; Transcript 818-822)

Excerpt from Redirect Examination of W. Elsner
February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2785-2789; Transcript 818-822)

dealing with us. We had the absolute right; yet, all of a sudden, they start raising different kinds of issues about it. You know, my preference, we would have just said we have the absolute right; fine. But, given Wharf's position, I think we had to alert our shareholders and potential shareholders that there could be a problem with it and that we didn't have the assurance just because of what Wharf was doing.

Q And, did you also alert your board of directors in your December 1993 presentations?

A Yeah, we looked at that this morning.

Q And, is that the reason that the language talks about negotiating with Stephen Ng rather than here's our investment right?

A Right. I have always thought that you're successful in working with people. I was confident that we'd worked through it. We weren't adversaries. We weren't -- you know, we were trying to accommodate whatever Stephen needed. I didn't know at that time we were just going to be blocked from making the investment.

Q Well, let me ask you about your personal dealings with Mr. Ng on this subject during this period of time. I'm going to jump ahead to another board here. And, this is this dinner in Los Angeles and this is Exhibit 1327. I think that's -- I know that's in the plaintiff's book. 1327 and this reflects the dinner that you had in Los Angeles. Do you remember that?

A Yes.

Q Now, were you expressing to Mr. Ng your concern with the fact that they seemed to be taking an inconsistent or evasive position?

A Yes. I made it real clear that his discussion about demonstrate to us what future services you're going to be able to provide to help me get the approval of the board was out of line. We had the right to invest based on what we agreed to provide from the October time frame until he could get his permanent employees into place. So, this idea that he was saying help me convince them as to future value, to me, was just a different deal, out of line, and it wasn't something that was agreeable to us.

Q Now, of course, by this period of time, they'd gotten the license by June 1, right, '93?

A About that time. I don't know whether it was the 1st of June or which day, but right in there.

Q And, your company had helped them implement the system by this time, right?

A Yes.

Q And, they launched the system in late October, right?

A Right.

Q And, it's just during this time period that you're trying to get it buttoned down and they're giving you these kinds of responses?

A That's right.

Q Now, at that dinner, as Mr. Ng reports it to Mr. Woo, he encouraged you to activate the TCA, but they were careful not to take the bait. Do you see that?

A I do.

Q Now, you do recall discussions about the TCA at the dinner?

A Yes.

Q What did he say about the TCA?

A It was -- I think what he was saying is we ought to go ahead and activate it. Then, we'd get paid for what we had done. So, he was encouraging us to activate it.

Q All right. Did you know that he was baiting you with it?

A I wouldn't have thought of those terms and maybe I was naive. I didn't realize it was quite that degree of a setup the way it's described here. But, we would have been willing to take payment, but not if it meant we had to compromise our other rights in any way, and he wasn't willing to tell us that. So, you know, I didn't believe that as I was sitting there at dinner with the guy that this was a take-the-bait kind of thing, but you know, we weren't going to just take that and go away.

Q Were you ever offered any money under the TCA where a condition to the offer wasn't that you give up your investment right? I probably put too many negatives in there.

A Yeah, I'm not sure whether I should say yes or no.

Q' Let me ask the question again. When you were offered payment under the TCA, was it on the condition you give up your investment right?

A Yes.

Q Were you ever offered payment under the TCA where a condition to it was not give up your investment right?

A No. We were never offered just payment under the TCA, on the terms of the TCA, or for services under the TCA or presumed under the TCA. It was supposed to be a settlement is what I recall of every single discussion.

Q When you say it was supposed to be, that was what Wharf was proposing?

A Yes.

Q And, did you take the bait?

A No.

Q Now, prior to this time, the TCA had been signed on September 25, 1992, some 15 or 16 months before that; right?

A That's correct.

Q And, prior to this dinner, had Wharf ever paid you a dime under the TCA?

A No.

Q Had Wharf ever proposed to pay you a dime under the TCA?

A No.

Q Had Wharf ever requested services under the TCA?

A No.

Q Had you ever provided services under the TCA?

A No.

Q Now, I'd like you to look at the document from which this page comes and I'd like you to look at the first page. It's a transmittal from Mr. Ng to Mr. Woo, and that would be in our book. And, that's the first page of Exhibit 1327. I'm going to ask you about some language. First of all, have you ever seen this transmittal from Mr. Ng to Mr. Woo; I mean, before this litigation?

A No.

Q Have you seen any of this before this litigation?

A No.

Q Did you know any of this was going on at Wharf before this litigation?

A No.

Q Now, he says, "Attached note reports my conversation with UIH last week." And, here's the part I want to ask you about and I'm going to highlight it here. All right. I want to ask you about the language that I just highlighted. It's under UIH and it says, "As you see, they are very persistent,

APPENDIX AF

Excerpt from Direct Examination of M. Schneider

February 24, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2841-2854; Transcript 874-887)

Excerpt from Direct Examination of M. Schneider
February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2841-2854; Transcript 874-887)

or chief operating officer, of the Wharf project.

Q As a permanent employee for Wharf?

A Yes.

Q And eventually, who was the COO for Wharf until they could get a permanent COO?

A Bill Pittman, one of our employees.

Q And was that as a result of your conversations on October 8th?

A Yes, it was.

Q Now, let me ask you to go back to October 8th. I'm going to put the agenda away. Tell us in your own words how the day unfolded.

A Well, my recollection of October 8th, it was a long time ago, but I recall it fairly well. The day began with a series of meetings that included other people, I believe, from UIH, and at some point we broke and allowed the interview with George Taylor to occur. So I think we spent the morning in sort of a round robin with a lot of different staff people from our company--

Q Did you--

A --talking with Stephen. And I was present, Dave D'Ottavio was present, some others were present.

Q Did you eventually meet with Mr. Ng in a more private session?

A Yes, we did.

Q Could you describe that, please?

A My recollection is that Dave and I and Mike, Bill Elsner--Mike being Mike Fries, Dave being Dave D'Ottavio, and Stephen went to the small conference room that's currently by my office and was by Bill's then and had a meeting.

Q Okay. What happened there?

A Well, the meeting began with just an exchange of views on what had been going on and was cordial, and Stephen expressed his excitement about the fact--I think they were the sole bidder it turned out, and now he was in a position where he was going to do an awful lot of work. And he explained to us that he really would like to see us actively support his effort, as we have been, and even become more active in terms of developing what he called an implementation team to come in and go from the bidding process to the actual creation of the business.

Q Okay. Tell us what an implementation team is and does.

A Well, an implementation team would take a plan and do just that, implement it. It would be a team of managers that would, in most cases, stay permanently with a project, in some cases just stay there as a transition until you could hire permanent personnel. But they start to literally implement a business. I mean, you'd go from the conceptual to the real.

Q All right. And what was he asking of UIH with respect to implementation?

A He wanted us to help him further firm up his concept. At that point I don't think his plan was jelled that firmly. I think they had a plan. We've had a lot of criticism in things of the plan. We're still in the evolutionary stage of getting that plan to what we could call a final financable business plan. And he wanted help with that, and then he wanted us to stay on and put together a team that could implement and make that plan reality.

Q All right. And did you or Mr. Elsner react to that?

A Yes, we did. Both of us reacted to it.

Q Can you tell us, the best you can recall, what was said?

A Well, I think what happened first, we had scripted this a little bit because as we said--as I said earlier, we were quite concerned by the fact that we hadn't seen more evidence of what had been happening through the summer in terms of an ownership negotiation put in any of the documentation.

So we decided we would reduce the size of the meeting to three of us, and that would be Bill Elsner, myself and Stephen Ng.

Q So what happened to D'Ottavio and Fries? Did you just ask them to leave?

A We just excused them.

Q All right. So it was the three of you. What happened?

A Well, we explained to Steve as politely as we could that we weren't very pleased with the situation and that we were having a misunderstanding with him in terms of communications that occurred between Mike Fries and with me, and we wanted to clarify the matter.

And we explained again to Stephen we weren't in the business of supporting people for compensation that wasn't investment. We were an investment company. We're a holding company, period, and that if that isn't what he was contemplating, we ought to have that discussion now because this was still an early enough period where, you know, not so much had happened as to make everybody bitter. But we said, "Listen, if we're going to have a deal together as we've been talking about, we need complete reaffirmation from you."

And Bill really delivered this pretty sternly to him. I was, you know, sitting back for a little bit of this period. But Bill laid out the facts again that, you know, we were not interested in anything but an investment in this company, and we were not willing to commit any more time or resources if that wasn't forthcoming.

Q Well, now you indicated that at that point in time, okay, there wouldn't be bitterness. Did you think that he had promised up to that point in time the right to invest?

A I thought personally that he had accepted an offer to work together for a right to invest during the summer. But, you know, if that changed, I guess we would have at that early juncture been more amenable to a friendly separation of some kind. We said that to him, I think, that, you know, "If you really feel that you're ready to go on on your own, we're not willing to be a part of your bid or a part of anything unless we have a right to invest. So we ought to just get that clarified right now. We don't want to be involved with you guys in a

way that misleads the government of Hong Kong or anything else on it."

Q Well, now, you already had been involved in this bid. A week earlier you had been mentioned in it. Did that cause you concern?

A Yes, it did.

Q What was that concern?

A That we were not representing the true nature of our relationship, and we weren't willing to go further under that basis.

Q What do you mean by that, you weren't representing the true nature of your relationship?

A Well, we'd entered the effort as an investor, and we were not going to go on unless we were an investor, and we needed to know that was Wharf's intent.

Q All right. And without that assurance, did you feel like you had to call the Hong Kong Government that you weren't going to be an investor?

A We debated this internally. We felt that if Stephen and Wharf were assuring us that that ultimately was going to be the result, the way that--the way they postured it with the government was pretty loose. And if we felt like we were going to go forward after this meeting and be part of the investment, then we weren't going to formally withdraw or anything. Obviously, we would go forward and try to win the bid and be an investor.

Q What if he said you weren't going to be part of the investment?

A We would have formally withdrawn.

Q All right. Now, is it important to UIH how its name is used with respect to governments and bid documents and those kinds of things?

A It's essential to UIH how its name was used in that manner.

Q Why?

A Because that's what we do worldwide for a living. Our credibility is key.

Q All right. Now, you expressed this, or Mr. Elsner expressed this to Mr. Ng. And did Mr. Elsner or did you tell Mr. Ng what specifically you would need at that point in time?

MR. JENTES: Your Honor, I hate to get into this, but maybe we could just ask him what happened rather than--

THE COURT: He's leading. Sustained.

Q (by Mr. Chase) All right. What happened?

A Well, we became more specific. Bill said to Stephen something to the effect that, "Stephen, do you intend to go forward with the type of transaction we've been talking about," which was an opportunity to invest in exchange for us working on the project and contributing our time and resources and cash out of pocket to this project. And Stephen answered that that was still their contemplation, yes.

Q Was something agreed to?

A Yes.

Q What?

A We basically came to a set of very principal terms that we would go forward on. In exchange for us working on the project, committing to the implementation team and assisting in winning the bid and starting the business out, devoting the people, time, personnel, Stephen would give us an option to invest.

Q What were the terms?

A The terms, as I recall them, were a minimum of 10 per cent. We would have 180 days from the time that the bid was won to demonstrate an amount of financing, and Stephen asked for and we agreed that that amount would be 18 months worth of equity financing toward the business, and that we would invest side-by-side with Wharf, which would mean that we would invest at the same cost level that they would come in at.

Q Now, previously you testified with respect to having your efforts and your costs counted as capital. Do you remember that?

A Yeah, that was part of what we were giving as consideration. We would contribute our efforts and time, and that would go toward our capital contribution ultimately.

Q How does that work? Explain that again.

A We spent a million dollars worth of time, people, airplane tickets, hotels, you know, consulting fees. Everything that we'd

have to amass to put this together, we would get a million dollars worth of credit toward our equity contribution.

Q So whatever you put into it, that would be the credit?

A It would be an in-kind contribution.

Q Was this acceptable to Mr. Ng?

A Yes, it was.

Q Was anything else discussed? Did you talk about the fact that you were going to document this?

A We talked a lot about the situation as it stood, and my recollection was, we were still in the middle of a three-way documentation with NYNEX. And there were memoranda of understanding that had been floating around among the three parties, and what we said, I believe, was we would use that document as the place where we would ultimately insert the language confirming our agreement. And that was the documentation we contemplated continuing with at that point.

Q Was this acceptable to Mr. Ng?

A It seemed to be.

Q Now, in that context, what did you discuss about NYNEX, if anything, at that meeting?

A My recollection is that we had--we had both known, Stephen and our company, that NYNEX was a little shaky. I think I used the word flaky the other day in terms of how they were behaving, and that was still the contemplation at that point. We didn't know for certain whether they would intend to stay with this project, and so we agreed basically that we

would try to document it with them involved. If they didn't stay involved, we'd go to a two-way documentation.

Q Now, you understood NYNEX was certainly in conversations with Wharf on this same subject, investing, right?

A I think they were, yes. At that time I understood it.

Q And they had been for some time, as far as you know, right?

A As far as I knew then, yes.

Q Was that a problem for UIH that NYNEX was considering coming in?

A No.

Q Okay. Was it a condition that Mr. Ng imposed that you could invest only if NYNEX invested?

A No, it was really the opposite because as I said, both of us knew those guys were not solid, so how could we make a condition out of somebody that both of us felt were not solid partners in the effort.

Q When you say not solid, what do you mean by that?

A That they might not go forward with an investment.

Q Okay. Now, was this agreement with Mr. Ng--you said it was going to get documented with NYNEX there. Was there discussion about how it would be done if NYNEX decided it wasn't going to be an investor?

A Yes, we discussed going to a two-way documentation.

Q Was--did that appear to present any particular problem?

A No, and, in fact, later we undertook that--

Q Did Mr.--

A --when NYNEX did drop out.

Q Now, did Mr. Ng say that's fine, but our agreement is subject to this documentation occurring?

A No, in fact, Bill's--Bill's principal point reinforced by me repeatedly was, "Stephen, we're not willing to proceed conditionally," and, you know, at that point I believe Stephen reaffirmed there were no conditions. He was authorized at these minimum levels of 10 per cent to have us come in. We kept pressing, and I think did throughout the process, to own more than 10 per cent. To be fair to him, he said that he hadn't had a full discussion of that with some of the senior people internally, and I guess that means Peter Woo ultimately, and that if we ever got to that, we'd probably have to have further discussions. But the 10 per cent he was fine with.

Q Let me make sure I understand. You're saying that he said if it went beyond 10 per cent, he'd need further authority?

A He said that either then or later, but I think he was even implying it then because we were pushing for, you know, 15, 20, 25 per cent, with the more we could own, the better for us, you know, actually.

Q Now, you had described earlier in your testimony a discussion you had with Mr. Ng in the middle of September about the subject of whether he would need any board approval

or any further authorizations on the 10 per cent. Do you recall that?

A Yes, I do.

Q Did you discuss with him anything about him needing any further authorizations on October 8th to promise you the 10 per cent?

A My recollection is we clarified it with him again that he didn't need further authorization from his board to offer us what he was offering us.

Q And at that time if he would have told you he needed authorizations, what would your reaction have been?

A We'd have said, come back and see us when you have it, and we'll talk about committing our people.

Q And at that time, had he told you that his board had already rejected you on 10 per cent?

A Of course not. In fact, I don't think he ever said that, period, until well over--you know, well over a year later.

Q Now, in addition to having this right to invest, did you contemplate there would be additional agreements or additional terms with Wharf?

A We contemplated that, as normal business people do, that you will end up having documents that establish additional business-related terms, none that were conditional to the investment, but some that would flush out how you'd behave with each other in a normal shareholders ' relationship.

Q Is that typical in these kinds of deals to have those kind of agreements?

A Yes, it is.

Q And did you expect that Wharf would negotiate in good faith to such an agreement?

A Yes, we did.

Q Was it a condition to your right to invest that you reach further agreement on additional terms?

A No, it wouldn't have been a condition to our right to invest.

Q Was it a condition to your right to invest that you reach agreement on a shareholder's agreement?

A No, it wouldn't have been even conditional upon that. Typically, one would have been forthcoming over time, but it wasn't a condition.

Q If it was a condition, would you have committed your troops on October 8th?

A No, we wouldn't have. That's the whole point of the discussion we were having with him.

Q What do you mean?

A We were not willing to do any more work, spend any more time, turn our head toward his business any further unless we were absolutely certain we were going to be partners, and if we weren't partners, then he should find--in fact, I think Bill put it

to him that way, that if we weren't going to be partners, we were happy to give him a list of consultants he could use.

Q Okay. Now, you didn't write it down right then and there, did you?

A No, we didn't.

Q Did you trust him?

A Yes, we did.

Q Did you also assume that he was going to act in good faith to get it documented?

A Yes, we did.

MR. CHASE: Okay. This is probably as good a place as any to quit for the night, Your Honor.

THE COURT: Okay. Let's do that. Go home, drive safely, come back tomorrow morning.

(4:53 p.m. - Jury excused.)

(Whereupon, at 4:54 p.m. the hearing was adjourned, to reconvene at 9:00 a.m. on Tuesday, February 25, 1997.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

February 24, 1997

/s/ Nancy Wihsheim

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APPENDIX AG

Excerpt from Redirect Examination of W. Elsner

February 24, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2770-2773; Transcript 803-806)

Excerpt from Redirect Examination of W. Elsner
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(Aplt. App. 2770-2773; Transcript 803-806)

Q This is Exhibit 734, November 9, 1992 memo from Mr. Fries to Mr. Schneider, et al. I believe you were one of the et al. Actually, I probably do want to ask you some questions about this document. So, could you locate it in your materials?

A What's the number?

Q 734.

A Okay.

Q Are you there?

A Yes.

Q All right. Now, it starts out by saying, "The parties tentatively agree to a complete negotiation of shareholder's agreement by November 30." Do you see that?

A Yes, I do.

Q Okay. Now, what is generally a shareholder's agreement?

A It's a document that would outline the working relationship of the parties after an investment.

Q Was your right to invest dependent upon agreement to or finalization of a shareholder's agreement?

A No, it wasn't.

Q Did you anticipate there probably would be a shareholder's agreement?

A Sure, I figured there would be. I figured Wharf would want one, we would want one, and that was fine.

Q To your knowledge, was a shareholder agreement and shareholder terms negotiated between the parties after October 8 and on into the winter, spring, summer, and fall?

A Yes.

Q And, did that have any--did that impose any condition on your right to invest pursuant to your agreement?

A No, it did not.

Q Why is that?

A Because our right to invest was something that was firm based on our providing those services. It didn't say that we had to do other things, other than demonstrate financial capability. So, it was in no way dependent on another document or another event.

Q And, show financial capability when?

A Within six months from the date of award of the franchise, we had to show that we had the financial capability to fund the first 18 months of the project.

Q And, was that Mr. Ng's condition?

A Yes.

Q Now, if you had been told on October 8 that your right would be dependent upon reaching final complete agreement of a shareholder's agreement, what would you have done?

A I would not have expended the resources or put UIH resources into play for the benefit of Wharf Cable prior to having that completed.

Q Let me ask you about--under key issues, it says, (A) ownership. Do you see that?

A Yes, I do.

Q Can you see from there?

A I can see it.

Q Oh, okay. It says, key issues, ownership. What was the ownership issue in November 1992?

A We still wanted to try to get more than the 10% that we had locked up.

Q Did that ever go away as an ownership issue through the fall of '92 and the winter of '93 and spring of '93?

A No, we would have still liked to have had a larger stake than the 10% that we had agreed upon, and especially when Nynex dropped out, we tried even that much harder to get a little bit of what NYNEX didn't take. But, no, that stayed as something we would have liked to have had through that period.

Q Now, in attempting to get a larger stake, did you try to trade up to a larger stake? Did you believe that you were

compromising or giving away what you had already been told you had?

A No, we weren't compromising it.

Q If you thought you were giving it up by asking for 20, what would you have done?

A Well, we would have never put the 10% at risk. So, we wouldn't have--we had 10%. We weren't going to give that away.

Q Okay. So, the ownership issue was how much above 10%?

A Yes.

Q Now, UIH-NYNEX relationship, do you know what issue there was at that point in time on that subject?

A No, I don't.

Q Okay. To your knowledge, was there any direct relationship between UIH and NYNEX at that time?

A No, there wasn't.

Q Did you have any misgivings or offense or resistance to becoming a partner with NYNEX?

A We were comfortable. We knew all along that Wharf was working with NYNEX, that NYNEX was being invited to be a strategic partner, and we were comfortable with that. That was fine with us.

Q Okay. Was it part of your deal?

A No.

Q Let me just quickly--terms like liquidity, what is liquidity?

A It's the rights of the parties with regard to selling their interests. It just gives--could be a requirement that if you want to sell your shares, you offer them to the other party first or it says you can't sell for a period--it can get into different types of provisions that have an impact on when you can buy or sell shares.

APPENDIX AH

Excerpt from Redirect Examination of W. Elsner

February 24, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2780:22-2782:03; Transcript 813:22-815:03)

Excerpt from Redirect Examination of W. Elsner
February 24, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2780:22-2782:03; Transcript 813:22-815:03)

Q All right. Let's go to your October 22, 1993 UIH board presentation, and that is the presentation that is another presentation where you talked about your investment right, but they've highlighted: "Partnership corporate. Current terms of proposed MOU for UIH investment summarized below. Expect to finalize agreement in first week of November in Hong Kong." Do you see that?

A I do.

Q And, that would have been a board presentation to your board; right?

A That's right.

Q Now, MOU is memorandum of understanding?

A That's correct.

Q And, is that the kind of document that you've been describing to us containing shareholder terms?

A Yes.

Q Did you also understand that it was going to document and contain your right to invest, as well?

A Yes, that would have been in there.

Q Okay. Now, was your right when you were granted and when you acted on it, was it conditioned upon it being put into

some agreement or did it exist without even being written into the agreement?

A It had nothing to do with this written agreement. We had the right to invest at that October 8, 1992 meeting. We performed all the services under our side of the agreement. We had the right to invest at that point. It was not part of this documentation process.

Q Were you incorporating it into the MOU just to have a place to put it?

A Well, it would seem logical to go ahead and put it in there, but it wasn't--that wasn't a condition to having it.

APPENDIX AI

Excerpt from Direct Examination of P. Duffy

February 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2873-2874; Transcript 906-907)

Excerpt from Direct Examination of P. Duffy
February 25, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2873-2874; Transcript 906-907)

Q What did you do in that job?

A Well, in that capacity, I was responsible for overseeing the foreign offices in Europe and in Asia, I was based in New York at the time, and to basically help to develop a strategy design to position NYNEX to participate in the international telecommunications business.

Q And you had that job until when?

A That job until mid 1990.

Q And then what happened?

A Well, by that time, we had started to grow. As you can imagine, NYNEX International Company started off with about five people, and by 1990, we had developed a presence in a number of companies and we decided to upgrade our presence overseas, so I was asked to move to Hong Kong and to be responsible for business development and operations in the Asia Pacific region. So that was everything from Japan down through Southeast Asia and down through Australia and New Zealand.

Q And that was in 1990, you said?

A I move to Hong Kong in 1990, yes.

Q And you were responsible for all of the Nynex business development and--

A Operations.

Q --international business in Asia?

A Yeah, Asia Pacific, yes.

Q How long did you have that job?

A Till 1992.

Q And then what?

A I was asked to take on additional responsibility. So in addition to the Asia Pacific region, I was asked to pick up all business development and operation responsibilities outside of North America. So fundamentally, I had everything except North America, which really translated into Europe and Asia Pacific, that's where we were most active, although we did go into South America and to some extent, into the Middle East, but fundamentally, it was Europe and Asia Pacific.

Q Was this--did the name of this NYNEX business always remain the same?

A No, NYNEX International Company basically survived as a legal entity, but became a kind of a relationship organization, and continued to be a cost center. During the early days of our international activities, we were operating NYNEX International Company as a cost center. Now it became a little more important to start to ring the cash register a little bit, so we formed a company called NYNEX Network Systems Company, which was a profit center. NYNEX International Company then provided support, relationship support, government relations, external affairs, those kinds of things, at the international level for the new profit center called NYNEX Network Systems Company.

APPENDIX AJ

Excerpt from Direct Examination of P. Duffy
February 25, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 2956:20-2963:07; Transcript 989:20-996:07)

Excerpt from Direct Examination of P. Duffy

February 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 2956:20-2963:07; Transcript 989:20-996:07)

Q Now, let's talk for a minute about Exhibit 532. Do you have that there?

A Yes, I do.

Q What is this?

A This is a Technical Cooperation Agreement.

Q And, it's dated when?

A And, it's dated September 25, 1992.

Q And, it is between what companies?

A Between Wharf Cable Limited and NYNEX Network Systems Company.

Q If you'll look at Page 12 of the document, was it signed?

A Yes, it was.

Q By whom?

A By Mr. Stephen Ng on behalf of Wharf and by Henry Van Demark on behalf of NYNEX.

Q Look at--I think it's the first page of the document?

A Yes.

Q There's a " whereas" section, do you see that?

A Yes.

Q Just take a look at that for a minute. What was the purpose of this Technical Cooperation Agreement?

A Basically, to provide Wharf Cable with technical support in preparation for the submittal of the document to government which would hopefully result in the granting of a license to operate subscription cable television.

Q Look at Page 3, Mr. Duffy. There is a Section 5 that says "specific duties of NYNEX"; do you see that?

A Yes.

Q And then, a subsection (a), transfer of technology?

A Yes.

Q Does that describe one of the principal duties of NYNEX under this agreement?

A Yeah, under this agreement. Yeah. To transfer technology, resident NYNEX to the Wharf Cable Group.

Q And then, there are a series of entries under that transfer of technology point?

A Yeah, right. Exactly.

Q And then, look at the next page, Page 4.

A Yes.

Q This is another specific duty of NYNEX, is that correct? Down at the bottom, (b), personnel and training?

A Yes.

Q And, what was NYNEX's obligated to do under that section, in brief?

Mr. Chase: Your Honor, as long as the witness is going to testify about the document and about obligations and give opinions as to obligations, I think he should put it in context as to when the conditions become operative if he's going to interpret this document for the jury.

The Court: You can bring that out on cross-examination. Overruled.

Mr. Chase: Okay. Thank you.

Q (by Mr. Munson) Mr. Duffy, in a nutshell, what was NYNEX required to do on the personnel and training duty?

A NYNEX would make available its training facilities to the group to provide training at its facilities in NYNEX operating area or to what we call suitcase the training programs out to Hong Kong. In other words, we had developed technical training courses for technicians and engineers and so on and would be willing to offer those to Wharf to train their people.

Q Look next at Page 6. There's a Section 8 sort of in the middle of the page that says, "fees and payment". Do you see that?

A Uh-huh. Yes, I do.

Q And then, there's a list here ; first year, second year, third year, fourth to six years?
A Right.

Q It says, "First year, $5 million". Was that $5 million U.S. or $5 million Hong Kong?

A Hong Kong dollars.

Q Do you know what $5 million U. S. translates into? Or $5 million Hong Kong translates into in U. S. dollars?

A Yeah. The conversion rate is about 8 to 1, roughly; 7.8. But, 8 to 1. So, 8 into 5,000,000; so, $600,000 roughly.

Q So, this $5 million Hong Kong equals about $600,000?

A Yes.

Q More or less, is that right?

A Roughly, yes.

Q Finally, in this document, look at Page 10. There is a Section 14.9 that says, "This agreement may not be released, discharged, supplemented, interpreted, amended, varied, or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of the parties." Do you see that?

A Yes, I do.

Q Did you understand that this agreement could be changed orally?

A No, it couldn't be changed orally. It had to be in writing.

Q Was this agreement--this Technical Cooperation Agreement in your view that we've just been looking at between NYNEX and Wharf, was this an enforceable agreement?

Mr. Chase: Objection, no foundation.

The Court: Sustained.

Q (by Mr. Munson) Is this an agreement that you signed intending it--that was signed by NYNEX with NYNEX intended it to be effective?

Mr. Chase: Objection; first of all, he's already testified he didn't sign it and he's laid no foundation as to what his board of directors intended or whether they intended anything.

The Court: The objection is sustained.

Q (by Mr. Munson) Was this document approved by the NYNEX board of directors, Mr. Duffy?

A No. This document would not have to go to the board of directors.

Q And, why not?

A Because it didn't commit the corporation to any funding. That was within my authority.

Q So, you approved this document?

A Yes.

Q Did you intend that NYNEX would be bound by it when you signed it?

A Sure, yes.

Q Now, was this document, was this a Phase 1, getting to you know you, or Phase 2, making a little investment, or a Phase 3, making a big investment kind of agreement?

A Well, really, it was an interim agreement. We had hoped--if you recall, we were not able to get our board approval on the agenda for the 24th of September. We felt that we needed a binding agreement between the parties to bridge the period between the 24th of September when we expected to have board approval and that date when we would ultimately get board approval. So, this formalized the continuing relationship between ourselves and Wharf with regard to NYNEX support of the project.

Q Did you have any intention about this document being replaced, if possible, at some point?

A Yeah. In fact, I think, if I recall, there was a section in here which provided that within a certain period of time this document would be superseded by a shareholder's agreement. And, the shareholder's agreement obviously would be approved by the board of directors which would give us the authority to invest in the project.

Q Do you know if anybody else signed a Technical Cooperation Agreement with Wharf in September of 1992?

A With regard to these projects?

Q Yes?

A No, not that I'm aware of.

Q Did you ever heard that UIH had signed--

Mr. Chase: Objection; leading.

The Court: Sustained.

Q (by Mr. Munson) Do you have any information about anybody else signing a Technical Cooperation Agreement like the one that NYNEX signed?

Mr. Chase: Objection; asked and answered, compound, and leading.

The Court: Overruled.

The Witness: I'm sorry, what was the question again?

Q (by Mr. Munson) The question was do you have any information about anybody other than NYNEX signing a Technical Cooperation Agreement?

A No, I don't.

Q When NYNEX signed this Technical Cooperation Agreement, in your view, did you have--did NYNEX have a right to invest in the Wharf Cable telecommunications project?

A No.

Q. Did they have an option to invest?

A No.

APPENDIX AK

Excerpt from Cross Examination of P. Duffy

February 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3016; Transcript 1049)

Excerpt from Cross Examination of P. Duffy

February 25, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3016; Transcript 1049)

investment right would be subject to what UIH did? You were never told that?

A I'm really not sure I understand what you're saying. I--

Q Well, you told me and you told us that NYNEX would provide services if it had a reasonable expectation of investing, right?

A Yes, exactly right.

Q Was that reasonable expectation of investing in any way, shape or form conditioned upon UIH also investing?

A No.

Q No one ever told you that it was, did they?

A No, they didn't.

Q And you wouldn't expect that UIH's expectation or right to invest would depend on anything NYNEX did, did you?

A Again, I'm not going to speculate as to what Uih wanted, or I don't know.

Q All right. Let me show you some T.V. All right. I'm going to show you a clip from Mr. Stephen Ng's deposition, and then I'm going to ask you a question. So if you would watch this, it's about NYNEX.

A Okay.

(Whereupon, a clip from Mr. Ng's deposition was played for the witness and the jury.)

THE WITNESS: I can't--I can't hear this.

APPENDIX AL

Excerpt from Direct Examination of M. Schneider
February 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3228; Transcript 1261)

Excerpt from Direct Examination of M. Schneider
February 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3228; Transcript 1261)

Star owned and wanted us, because we knew them, to try to help.

Q Did you try to help?

A I think we did try to help.

Q Okay.

A But I don't--I can't recall what really came of it. I didn't see Sam on this trip. I had spoken to him around there somewhere, and I think Mark Booth, who knew Sam quite well, also spoke to him.

Q All right. Now, in September when you wrote to Mr. Ng and you referred back to your August dinner, you said, "We all agreed to finalize the documentation of our agreement by the end of September." And they told you they had no problems with it; is that right?

A That's right.

Q And you--did you tell them you were ready to fund into it and you had the money?

A Yes, I did.

Q Okay. And then you don't hear from them, and now it's the end of September and you still haven't heard from them and you send this note, right?

A That's right.

Q All right. Now, I'm going to peel back a little bit of the time line here. This is going to go in stages, and I don't know--all right, at this time--look at Exhibit 564,

APPENDIX AM

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3230-3240; Transcript 1263-1273)

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3230-3240; Transcript 1263-1273)

A Yes, I do.

Q Now, when you were communicating with Mr. Ng through the summer of 1993 and on into September of 1993 asking where your MOU was, did he tell you that he had told the chairman that partnership discussions were in suspension?

A No, he did not.

Q Did he do anything, or did Mr. Fung do anything that you're aware of, to give you any indication that Wharf considered partnership discussions to be in suspension as of May 28, 1993?

A No, they did not.

Q Now, following your letter of September 7, you write another letter, and let's take a look at that letter. That letter is dated October 7, 1993, and that's Exhibit 1278. Could you take a look at that, please? And this one would be in the book, but we're going to do it up here.

A I have it.

Q Now, this letter you write to Mr. Ng, October 7, 1993, I'm going to take you through this in pieces, so bear with me.

"Dear Stephen: It was nice to speak to you the other night. I must say I am a bit concerned by the fact that you have not finished with our memorandum of understanding. As I

informed you, the deal that you and I made was never contingent upon whether NYNEX was in or out or whether there were other telephone partners involved."

Now, let me stop right there.

In your telephone conversation--and I'm going to zoom in on some of this language here. In your telephone conversation that you refer to in this letter of the other night, did Mr. Ng say anything to you about your deal being contingent upon whether NYNEX was in or out?

A For the first time, he didn't say it that bluntly, but he said, "Well, we're not sure there is any deal unless there was a telephone partner involved." I'm not sure whether he said it was NYNEX or a telephone partner.

Q Now, this was in response to you asking, "Where's the MOU, where's our agreement?"

A Yes.

Q First of all, let me ask you this: Did he ever indicate to you in that phone conversation that there were anything wrong with the terms of the most recent draft of the memorandum of understanding?

A Not that I can recall. He hadn't said that in months.

Q Okay. And throughout the succeeding period of time here, did he say anything was wrong with any of the terms of the memorandum of understanding?

A Not to my recollection.

Q But now he raises NYNEX, right?

A Yes, he did.

Q What was your reaction?

A Well, it's what I put in this letter, it's not relevant or related at all to what we had agreed; never discussed.

Q What did he say? I mean, did you tell him that on the telephone?

A I'm sure I did.

Q And what did he say?

A I don't recall.

Q Okay.

A I'm sure not much.

Q Do you think he stuck to his guns, though?

A I think he vacillated some in the future from this position, but it was one of the maneuvers they were using right around then.

Q Now, is this the--

MR. JENTES: Your Honor, I object. It was not responsive. I thought the question was what did he say.

The Court: Sustained.

Q (by Mr. Chase) Now, I want to be clear here. This is October 7, 1993, and it refers to a conversation you had the other night, right?

A Um-hum.

Q And he tells you that our deal was dependent on NYNEX or a telecom partner, right?

A That's what he said, as I recall.

Q Prior to that time, had he ever told you that your right to invest was conditioned upon NYNEX or another telecom partner being in the transaction?

A Never.

Q All right. Let me go on with the letter.

"We have spent a great deal of money, time and effort in, one, helping you build a reasonable business plan, negotiating equipment deals as a cost saving of many millions of dollars to the project, providing staff, including the chief operating officer of cable while we helped identify and hire permanent personnel, including some of our own people, and, four, leading a consortium of international banks into your project. Our deal was never to seek compensation, but to be a 10 to 20 per cent investor in the project. This was our agreement from the very beginning." Do you see that?

A Yes, I do.

Q Did you discuss that with Mr. Ng in your telephone conversation?

A Yes, I did.

Q What did he say?

A Not very much, as I recall.

Q Did he dispute any of those things that you were telling him?

A Not orally, not on the phone.

Q Okay. Did he--did he dispute the fact that you were in this project for the right to buy into the project as opposed to be compensated as a consultant?

A Pardon me?

Q Did he dispute the fact that you were in the project to seek--not to seek compensation, but to be a 20--10 to 20 per cent investor in the project? This was our agreement from the very beginning; did he dispute that?

A No.

Q In fact, did he ever dispute in any of your conversations that you were in this project only for a right to buy into the project?

A The closest he ever came to doing that was when he tried to activate the TCA with Bill and I later on that year, but, no, I don't recall him ever directly saying to us, oh, you were in here as a consultant. I mean, that would have been liable to, you know, create violence at that point. But he never did dispute it directly.

Q All right. Let me go on.

"I understand your issue of prioritization problems with Fortress Star, et al. However, our deal is straightforward, relatively simple and not a complicated negotiation. We stand ready to put in our 10 per cent of the money as agreed, subject to the reasonable protections that you in turn agreed. There may be some minor adjustments to the document, but in

principal, we have talked about these matters for well over a year, and have received no significant objections from you regarding terms." Do you see that?

A Yes, I do.

Q What were you talking about there?

A Talking about the fact that we'd had the same virtual document for a year, and he hadn't objected to the material terms ever, had indicated they were acceptable, and that they were going to sign them, and we were going to go forward with our investment. And until this point, he never made contingencies of any type on it, and he's raising this, in my view, improperly and against our agreement.

Q When you talked to him on the telephone, did he raise any of these shareholder terms or MOU terms as being the problem?

A No.

Q Now, the next thing you say, "I have gone on good faith and trust so far in working on this project, and I know in the near term, you are going to have an enormous number of complicated issues coming up where having an experienced ally will be useful." Do you see that?

A Yes, I do.

Q Did he acknowledge that?

A I think to an extent, yes.

Q All right. And then finally on the next page, "I will work together with you to finalize this matter the first week of November, as you suggested." Do you see that?

A Yes.

Q What did he suggest about finalizing the matter in terms of the timing?

A Part of what he was doing at this point was he was playing sort of a sympathy card with me, that he--

Mr. Jentes: Object, Your Honor. This is not responsive.

The Court: Sustained.

Mr. Jentes: This is his interpretation.

The Court: Sustained.

Q (by Mr. Chase) Well, tell us what he said, Mr. Schneider. Don't interpret.

A What he asked me to understand was that he had some issues with certain unnamed board members in things like the telephone issue and the issue of increased ownership had caused problems. And he still thought because of his credibility that he could solve the problem, but would I please help him and prepare you know, someway to massage this with his board and get this done so we could go along.

It was still my opinion at that late date that he was trying to do the right thing, and the things he was saying to me were that, here, help me on this. And I, as a businessman, was trying to salve this deal that we'd worked on for well over a

year and saw a very large chance of it slipping away. And I was trying to figure out ways to help him.

Q All right. Now, look over at Exhibit 1281, please. Exhibit 1281 is an October 9, 1993, letter from him to you, I assume by fax. It doesn't look like you people ever use the mail.

If you'll look over at that letter, now Mr. Ng writes to you, and he says, "You were made aware early on that board approval was necessary on our side." Now he's talking board approval here. Do you see that?

A I do see that.

Q Now, let's talk about that for a second. What--board approval for what did you understand he was talking about?

A I couldn't tell what he was talking about for certain here. If he meant board approval for our deal, that was a flat out lie. If he meant board approval to look at some of these expanded terms we've been discussing, to be fair to him, he had said, I would--I'd have to--you know, the increased percentage and the amount of rights we would have. He did say he was going to run that back by his board, I believe.

Q All right.

A But I interpreted this to mean that he felt that he had to have board approval to do anything, which I thought was in direct contradiction to what we'd agreed.

Q Well, then he goes on to say, "You were also made aware at the time NYNEX made the decision at the end of last year, that firstly we would need to find a new basis, and that secondly, my board directed we should focus on station launch." Do you see that?

A I do see it.

Q Well, at the time NYNEX pulled out in 1992, early '93, did Mr. Ng say, "All bets are off, we've got to find a whole new basis"?

A Absolutely not. He said the opposite. He said, "Let's start drafting," and we did start drafting, a two-way deal. And he said, "I hope very much you guys are being committed to this deal," because he still needed us then. He--

Q He didn't have the license then, did he?

A He didn't have his license yet.

Q Now, at this point in time, he's had the license for a couple of months, hadn't he?

A Yes, he has.

Q And he still has told you at the time of this letter, partnership discussions and suspension, has he?

A No, he hadn't.

Q Now, he goes on to say, "By November we will have launched and I will be able to talk to you again to try to find a new basis for my board to consider." Do you see that?

A I do see that.

Q Did you agree, okay, we'll finish this in November?

A I said, "Let's give it the old college try and see if we can get this done in November." I mean, at this point again, I'm

trying to salvage the relationship. It appears that they're backing out.

Q All right. Now, let me turn you to something slightly different here.

Take a look at--take a look at Exhibit 1264, please. This appears to be a draft, or it appears to be a memo from Stephen Ng to Emil Fung, attaching some pages of draft of the Wharf financing memorandum.

A Pardon me, Jeff, what was the exhibit number?

Q Exhibit 124, and this is dated September 7, 1993.

A I see that.

Q All right. Let me put it on the screen here. This is from Mr. Fung -- Mr. Ng to Mr. Fung. And it says, "From a copy of the Wharf Cable financing memo I sent to him, chairman has picked up paragraphs on which he has a view to express. His comments are attached for your future reference." And then somebody writes, "A little too late, but no issues of significance." Do you see that?

A I do see that.

Q All right. And then in the memo, it appears that Mr. Woo has crossed out this paragraph under Strategic Partners.

A It appears that he did, didn't it?

Q Under Strategic Partners, he crossed out the paragraph that talks about "One such potential, United International Holdings, Inc. , a leading international provider of multi- channel television services, et cetera." See that?

A I do see that.

Q Now, did anybody tell you in September, October or anytime in that fall period that Mr. Woo had scratched you out as a potential strategic partner or a strategic partner in the venture?

A No, they had not.

MR. JENTES: Your Honor, I think the record should show that the document that went out went out about a month before this, and there was nothing scratched out about UIH--

THE COURT: You can bring that out on cross-examination.

Q (by Mr. Chase) Well, I'll bring it out now, Mr. Schneider.

This document, according to the memo that transmitted it, was September 7, 1993. You saw that, right?

A Which one are you talking about, Jeff, the--

Q I'm looking at Exhibit 1264 where Mr. Woo made that scratch-out, and we have the date September 7, 1993. That's the English version. It's 7-9-93, would be September 7, 1993, right?

A Where do you see the date? I'm sorry.

APPENDIX AN

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3250-3258; Transcript 1283-1291)

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3250-3258; Transcript 1283-1291)

Q All right. Let me ask you to look at Exhibit 1305. This is a November 5, 1993, letter from you to Mr. Ng, transmitting a draft memorandum of understanding.

A I see that.

Q Now, I'm going to run parts of this up on the screen. All right. Now, this follows by a few days your meeting in Hong Kong; is that right?

A Yes, it must have.

Q All right. Now, the paragraph I've highlighted here, "As you and I have discussed, UIH has an expectation and desire to invest not less than 10 per cent in the Wharf Cable project. This"--

A Is this supposed to be coming up here? I'm sorry.

Q Oh, you know what, thank you. Magic. Let's get back to it.

A Okay.

Q "As you and I have discussed, UIH has an expectation and desire to invest not less than 10 per cent in the Wharf Cable project. This has been our intent from the very beginning and has been reconfirmed by both of us throughout our relationship. I understand your board's desire to better define the strategic direction for Wharf Cable before finalizing the complete

partnership strategy, and I'm satisfied with your consistent support for UIH's role in that plan." Do you see that?

A Yes.

Q Now, you're talking about his board now. Why are you doing that?

A Because he's made the board an issue at this point.

Q Well, did you believe the board was necessary for your 10 per cent investment right?

A We believed the opposite.

Q Then why didn't you just tell him, forget about your board, give me my right and let's get on with it?

A I had told him. He said that the board was now an issue whether that was the case or not, and so it goes to the ability to actually close a transaction. If a man locks himself in the bathroom when you're there to buy the horse you put a down payment on, you can't very well hand him the money. And if their board was going to say no, and they weren't going to take our money, then there's not much we could do about it--

Q Now, at this point in time--

A --except get here.

Q Pardon me?

A Except end up here.

Q All right. Now, at this point in time, I suppose you had the option to say, okay, let's go see Judge Kane and get this ironed out?

A You did have that option about that point in time.

Q And you chose not to pull the trigger at that time, right?

A No, I would say we're litigation adverse in my company.

Q All right. And so Mr. Ng was talking about having to get his board's approval, and you at this time had already given your company for over a year, hadn't you?

A Yes.

Q And they had had their license by this point in time for about five or six months?

A They had had their license. We lost our leverage.

Q All right.

A We didn't have much else if they were going to stiff us to really compel them to complete their side of the bargain.

Q At this point in time, did you have any leverage?

A Very little or none.

Q And what do you mean by--

A Short of litigation, that was about our only other alternative we were discussing.

Q Okay. And so you chose to write this letter and send this draft memorandum of understanding, right?

A Yes, we did.

Q Now, in the numbered paragraph down at the bottom, "We have modified the draft memorandum of understanding to reflect our current willingness and ability to finance our investment in Wharf Cable. This is attached for your review. The contract establishes the basic terms of UIH's investment and confirms our good faith negotiations, but would be subject to both of our boards' approval. We would like to sign this document as soon as possible and look forward to your comments." Do you see that?

A I do.

Q Now, you were writing to him and sending him a draft MOU, proposing that it be subject to both of your boards' approvals; is that right?

A Well, if you look at the detail on this, we were--we thought through this pretty thoroughly. He had now made it an issue to have board approval, so we thought--and he was asking, "Frankly, you're saying I'm going to get board approval. Please just help me do this. It's going to get me through this problem."

So we, I think in a bit of legal cleverness, structured the offer so that the board approval would become an approval by a subsidiary organization.

Q What do you mean by that, if we could look over at the draft memorandum of understanding?

A I'm not sure what page it's on.

Q Well, that would be about four pages into the document, and it says--four pages into the exhibit. It says, "UIH's investment in CNCL is conditioned upon the approval of the board of UIH and WCIL." Do you see that?

A That's right.

Q What's WCIL again?

A WCIL is an investment subsidiary for the purposes of the cable and communications business held by Wharf. We had in the past always been dealing with Wharf's parent--Wharf, Sr., big Wharf. We felt that because Stephen was an officer and basically the chief officer of Wharf, Sr., and had represented their board had approved it, that they could not be but in bad faith to not approve it again at WCIL.

Q So you thought board approval, if there was to be any at this point in time, would have to be simply a formality?

A And I told them so. I said, "It's got to be perfunctory, not anything you're really going to use to kick us out of this deal."

Q Why were you putting it in there at all?

A To help him get this transaction completed because, again, he's assuring us he's doing everything he can to help, you understand.

Q Now, at this point in time, what options did you have as far as this transaction?

A Slim and none. This or here.

Q All right. Now, let me ask you about an attachment that went with this letter. You've got two attachments. One is the

draft memorandum of understanding. Now, by the way, was that draft ever signed?

A No, they didn't even sign this.

Q And without going through details in this draft, how would you characterize this draft in terms of UIH seeking investor protections?

MR. JENTES: Object.

THE COURT: Sustained.

Q (by Mr. Chase) Mr. Schneider, you've described to us the discussions that went on earlier about super majority issues, liquidity, et cetera. Do you remember that testimony?

A Yes.

Q Now, was that still an issue with this draft that you were sending?

A I think we substantially gutted the draft of significant additional protections.

Q When you say gutted, what do you mean by that?

A Remove them.

Q And so whose protections would have been removed?

A Ours.

Q So you were willing to give up the protections?

A Yes.

Q All right. Now, look, if you will--

A I think there's some in here, but we gave up on quite a few of them.

Q All right. Look, if you will, at the standard disclosure regarding Wharf Cable that accompanies this, and first let me ask you why--why were you concerned about having disclosures regarding Wharf Cable at this time?

A Pardon me, where are you looking, Jeff?

Q It's WC00820, and it's--I think it's the third page of the document.

A Well, we--this is the worst part of it for us. We were in the middle--we had just gone public that summer. We had also done an offering to Apollo, did a private offering prior to going public, and we had also done a bond issuance. All three times you were forced to disclose things to the public in securities offerings. And we're doing our best. We have a history of integrity in our company in revealing what's happening to the public, and we never had any issue ever, and we never wanted that one ever, and we're doing our best to let the public know to the best of our knowledge what's happening with this transaction because the material transactioned our business.

Q Was this causing--this dialogue with Mr. Ng causing a problem with you in the disclosure context?

A An enormous problem.

Q How so?

A Because we--once you know that someone is breaching, you have to disclose it, but they never quite would cross the line. They would just add another hurdle to jump over.

Q All right.

A So you never quite got told you're not going to get your deal. If they would have said that, then we'd have an easy disclosure. We've been deprived of our deal, we're suing Wharf. That would have been--that would have been an easy disclosure.

Q That would have been your disclosure, okay.

A But instead we got the slow roll, and the slow roll, which is a rapidly increasing speeding roll now, was, okay, you're maybe still in, you're maybe still in, do this, do that, and try this, and maybe you're still in.

So we're trying to describe that to the public in numerous sets of documents, and I think this is just one more attempt at that, trying to get something in front of them that they wouldn't dispute and that would keep this deal alive because in the end, as business people, the shareholders and all of us being shareholders are best served by making the deal happen, not by destroying it, not by litigating. So our interests were best served trying to do everything we could to avoid it, and this is what we're doing right now.

Q Now, at this point in time, you were of full belief that you still had your right to invest your option?

A Of course.

Q And at this point in time, Wharf hasn't clearly said to you, no, you don't?

A That's right, also.

Q And so at this point in time, did you understand with any clarity what Wharf was really saying about this?

A No. To be honest, we didn't know what they were going to do.

Q All right. Now, let's look at your proposed standard disclosure here. United International Holdings, Inc., Standard Disclosure regarding Wharf Cable.

Go to the second sentence. "The company signed a technical cooperation agreement in September, 1992, relating to UIH's strategic and technical support through the license and implementation phase." Do you see that?

A I do see that.

Q Now, the companies did sign a technical cooperation agreement, didn't they?

A They did.

Q And you've testified at length about that, but as of the date of this proposed standard disclosure, had that technical cooperation agreement been put into effect in any way, shape or form?

A No, they never asked for services under it, nor did we ever stop payment under it.

Q Okay. Now, the next--now, why were you even mentioning it in this proposed standard disclosure, then?

APPENDIX AO

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3267-3283; Transcript 1300-1316)

Excerpt from Direct Examination of M. Schneider
February 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3267-3283; Transcript 1300-1316)

1994 regarding this investment opportunity." Do you see that?

A I do see that.

Q Now, first of all, do you know whose handwriting that is over in the margin where it says, "No opportunity granted"?

A I suspect it's Peter Woo's, but I don't know that.

Q All right. This is an internal Wharf version of your document. That's not your handwriting, I take it?

A No.

Q And not anybody's at UIH, as far as you know?

A No.

Q All right. Going back to the language that I read you, it talks in terms of an opportunity, and "The company anticipates making a decision in the three months of 1994." Now, would you explain why you chose that disclosure at this particular time? And when I say disclosure, proposed disclosure. I take it none of this is final.

A Was it the final one or not?

Q Well--

A You're saying this was not the final one?

Q Well, do you remember actually doing a public offering in the fall of 1993?

A I'm not certain whether we did or didn't. We've done two or three of those, so--

Q All right. Let's just deal with the language here, regardless of whether it's final or not. Why the language?

A Well, it was our best effort, sitting down with our lawyers, investment bankers, giving them all the information we had, sharing the letters you just exposed, giving them our view on what was happening, which at this point, what we thought was happening was Stephen is going to go and try to work through his board the problem, and that may take some time. Peter Woo certainly didn't tell us we didn't have a deal when we were sitting there with him or it would have been all over. We would have walked out and said, well, that's that. We have a new disclosure. It's a lawsuit and this lack of opportunity.

So now we're still in the process. We're in never, never land again because Stephen is saying, let me work with my board. Something good may come out of this. Don't press it too hard.

So we're trying to tell the investors on the other side, here's we are. We don't have a decision. We still believe we have a right to invest, but we don't know whether anything is going to be completed until spring, which is that--that was kind of the time frame we were starting to be spun toward by Mr. Ng.

Q You were starting to be what?

A Spun toward. He was indicating that, you know, now we've got to work on launch issues and work through the

launch issues. But before we're really going to sit down and settle this out, it's probably going to be the next two or three months.

Q All right. Let me move you to some additional language that was enclosed with that letter, and this is, again, some proposed disclosure language. And again, we're talking about disclosure to the public markets. I'll read you the last part.

"The company anticipates making an decision in the first three months of 1994 regarding this investment opportunity. The company anticipates a 10 per cent interest in Wharf Cable Limited would entail funding of approximately $45 million." Do you see that?

A I do.

Q And at the top of the thing it says, "The company continues to pursue its opportunity to acquire directly or through UIH Asia a 10 per cent interest in Wharf Cable Limited. Do you see that?

A I see that, also.

Q Now, does this also reflect the dilemma that you've described to us?

A Yes, it does.

Q Now, is that true--I'm going to focus you on this time period now so we don't have to go through every piece of proposed disclosure. Is that true of all of the proposed public disclosure and your board presentations during this period of time?

A Yes, it does. And you can see what we're doing. We're using words like continues to pursue, anticipates. I mean, these were things we still felt were accurate reflections of what we understood the case to be because again, we're being told by the CEO of the company, who normally when a CEO recommends something to his board, it's done, even if he does suddenly need it, which he told us he never did. In many cases like this, the CEO would never need board approval. But let's say he did. He's now telling us, I'm going to get this done. You know, trust me again. You know, we're having a little problem here, but I'm still going to work this through.

So our only thing that we could write at that point was this, something to that effect, that we anticipate, we're pursuing. We in the back of our minds knew we had a big problem, so we're trying to hedge our position with the public so that if doesn't come through, then we've at least given them the best of our knowledge at that time.

Q What do you mean you knew you knew you had a big problem?

A People don't behave like this when they're making good faith efforts to consummate a transaction with you.

Q So you suspect that something was happening?

A Well, I knew something was happening.

Q All right.

A They told me something was happening. Suddenly we need board removal. Suddenly NYNEX, suddenly la, la, la, la, la--

Q Why didn't you--

A -- things that never came up.

Q Why didn't you just go to the courthouse?

A Because that's not the business I'm in. I'm not in the business of suing people to make them do what they know they're supposed to do.

Q All right. Let's go on to Mr. Ng's reply in your proposed disclosure, and this is Exhibit--it's also in Exhibit 1308, I believe, in your exhibit book. It's November 11, 1993, from him to you, and it's also Exhibit 312. So it's in two different places. I'm sorry, Exhibit 1312.

A I know it's going to shock you, Jeff, but it's not in here.

Q Well, it should be a part of 1308.

A A part of 1308?

Q Yeah. So there.

A Okay. What am I looking at?

Q You're looking at a November 11, 1993, letter from Mr. Ng to you.

A Okay, okay. I have that letter.

Q All right. Now, he responds, and I'm going to read the highlighted portion. "We would much rather prefer you highlight only UIH's business development efforts associated with the TCA and omit any references pertaining to an investment by UIH and Wharf Cable or Wharf Telecom. As I explained in my previous letter, we are presently in the process of a review with our board. I am afraid that if any members of

our board were to be exposed to the comments outlined in the draft or be subsequently questioned by a third party on matters relating to them, they may be left unprepared to offer corresponding confirmation, and, in fact, may unwittingly present an entirely different message for the investment community. Worse yet, their exposure to these comments could by itself prejudice the outcome of the review." Did you see that?

A Yes.

Q Did you respect what he was saying there?

A Respect was probably not a very good word to use around me in my view of Stephen at this point, but--

Q Well, I'm--

A --did I understand it?

Q Yes.

A Yes, I understood it.

Q All right. And were you willing to go along?

A I don't think we did go along. With his request to change the language? No. Is that the question?

Q Well, let me show you what you did do. Let's look at still in Exhibit 1308, and it's also Exhibit 1311, and this is your final language that you proposed.

A Can you give me a page number or something?

Q It's actually November 11, 1993, from you to Mr. Ng.

A And this is the attachment?

Q The attachment to it is some proposed disclosure language for your public documents.

A Okay. I'm sorry, go ahead.

Q Are you there?

A I am there.

Q All right. And I'm going to ask you about this highlighted portion here. "I appreciate your latest comments. Attached is our final language regarding the Hong Kong situation. We have an interesting problem in that we don't want to overstate the case such that it bothers you or your board. However, we just let investors know that we may well need the money for the investment in Wharf. We tried to ride that fine line with this language. Simply referring to the TCA would be a misrepresentation since we have been intending to invest and have been negotiating the terms for many months." Do you see that?

A Yes, I do.

Q Now, first of all, let me ask you this: Were you talking there about letting the investors know that we may need the money for investment in Wharf? At that time, since April, your company raised about $100 million, hadn't it?

A Yes.

Q Did you need more money?

A Well, you did--no, not for the Wharf thing, but you don't use every cent. You don't leave a bunch of money sitting in a

pool somewhere. Other deals were going on. Other transactions were occurring, so we might have used some of the new money rather than the old money. Is that what your question is?

A Yes.

Q I think that's what it's intended to convey.

Q Did you at this time have the money to invest in this project?

A Yes, we did.

Q Now, you've proposed the disclosure, and you say, "In any case, the initial prospectus which we ran by you had stronger language in it. Therefore, you can see I am trying to accommodate your tactical concerns." Do you see that?

A Yes.

Q What tactical concerns were you referring to?

A Well, again, he was leading me to believe that he was trying to work through this issue with his board and that ultimately things would work out well for both of us.

Q All right. And this is the language that you finally ended up with. Down at the bottom, "The company continues to pursue its opportunity to acquire through UIH Asia a 10 per cent interest in Wharf Cable Limited and its affiliated programming company. Wharf Cable has been awarded a 12-year license, et cetera. The company is currently negotiating the acquisition of the 10 per cent interest in Wharf Cable, which it anticipates would entail funding of approximately $45 million through the build out of the system

currently scheduled to be completed in 1996. The company anticipates that the terms of this investment will be finalized during the first three months of 1994. However, there could be no assurance that the company will acquire an interest in Wharf Cable." Do you see that?

A I do.

Q And tell us how you arrived at this language.

A This language was the--again, the product of a number of lawyers and investment bankers working with our management, including myself, to try to describe reality as it is that moment. And our best guess was that was reality at that moment regarding Wharf.

Q And you had no further clarification by November 11th as to what Wharf was thinking?

A No, and the problem here is that although you may have all the rights in the world, if you don't think you can complete those rights, you owe a disclosure to the public that you may not actually be able to complete.

Q And what do you mean--

A And I think that's what we're trying to get at here.

Q What do you mean you may have the rights, but may not be able to complete them?

A It, again, goes back to the fellow who's taking a down payment on his horse, and then when you come to buy the horse and take it, he locks himself in the bathroom, refuses to take the rest of your money. If you can't hand him the money, you can't get the horse. You don't have the horse, do you?

Q I guess not. Let me ask you to look over at Exhibit 1313. This is in the jury book, and it's in your book.

A 1313.

Q Now, Exhibit 1313 is a November 12, 1993, note from Mr. Fung to Mr. Ng with a note back from Mr. Ng to Mr. Fung. Do you see that in your book?

A Yes, I do.

Q And this follows by a day the proposed disclosure that you and I just talked about, right?

A Yes, it would.

Q All right. Now, we have pulled out the language from Mr. Fung to Mr. Ng that says, "Our next move should be to claim that our directors got quite upset over these representations and have, therefore, instructed us to 'settle up,' on the TCA only." Do you see that?

A I see that language.

Q And then at the upper right in Mr. Ng's letter back to Mr. Fung, it's "Please initiate, expect to be seeing Elsner, Schneider at the Western Show." Do you see that?

A I think it says "seen Elsner and Schneider."

Q Okay. Do you see that?

A Yes.

Q Now, were you aware, or did anybody tell you, that Mr. Fung and Mr. Ng were planning their next move, was to tell you that their directors got upset over your disclosure?

A I'm not aware of that discussion at this time.

Q Were you aware that you were in some kind of a game where there were moves going on?

A I started to suspect we were in some kind of a game where moves were going on.

Q Were you aware of any of this that I'm showing you on Exhibit 1313?

A No.

Q Now, did you, in fact, then meet with Ng at the Western Show in December?

A Yes, I did.

Q And that would have been the dinner that we've talked about in Los Angeles; is that correct?

A Yes.

Q All right. Why don't you describe for us, first of all, what you were doing there, what he was doing there, as far as you know, and what happened.

A Well, we--Bill Elsner was with me, and we decided to sit with Stephen and see if there's some way to reconcile the problems that we clearly were in at this point. And my recollection of the dinner was we sat down, laid it right out in

the table again; what are you going to do, Stephen? Are you going to honor this or not?

Stephen, you know, mush-mouthed it for awhile, as I recall, and my, you know, board this, and I have this problem, but if you're patient we can work through it. And then came with this startling revelation that perhaps we should activate the TCA.

Q Okay. Up to this point in time, had he made that revelation to you?

A No.

Q And what was your reaction?

A Well, I said, "Stephen, we've never used the TCA for anything. Why would we suddenly activate the TCA?" And this kind of goes to moves going on. You start to realize you're in not a very good faith discussion at that point. So why would we suddenly start using the TCA right now? That wasn't an adequate answer, and I think--

Q Well, what was the--

A --I said, "Well, you know, Stephen, if you want to start paying us under the TCA and it doesn't prejudice any of our other rights to invest, we're delighted to do that. Start paying us--

Q What did you mean by that?

A --but we'll make sure we document it that it doesn't jeopardize the right to invest, and we'll go ahead and do it that way.

Q What did you mean about prejudice or jeopardize, taking payment?

A What he was trying to do, in my opinion, was in a sneaky fashion activate the TCA so that he could demonstrate that was the only document we were obligated to each other upon, and, therefore, use that to say, ah, hah, these fellows are using the T--it was kind of a silly thing really. But ah, hah, we're using the TCA, and that's really all our relationship is.

Q Well, now, he didn't say that to you specifically at this dinner I take it?

A No, but it was about that transparent.

Q And your reaction?

A Was what I just told you, "Stephen, we're delighted to take money for work done, provided that, Stephen, it doesn't jeopardize anything. We're talking about it in our investment, and if you want to document that and put that down, we'll do it."

Q All right. Look at Exhibit 1326, please.

A I see 1326.

Q Is that a December 9, 1993, memo from Mr. Ng to Mr. Woo?

A It appears to be.

Q Oh, it's in the jury book. It's 1327 because I believe that would probably have--that includes handwriting on it, okay.

Let me put on the screen here. We'll change our media for a moment and put it up on the touch screen. This is Mr. Ng's memo of December 9, 1993, from him to Mr. Woo, describing that dinner. And let's look at a couple of things he says here.

First of all, he's got in the letter something we've seen in the case where he says to Mr. Woo, "Encourage them to activate TCA, but they were careful not to take the bait." Do you see that?

A I see it.

Q Now, at the time he was offering you the TCA, did he tell you that he wanted you to do that instead of have an investment right?

A No, he was careful not to word it that way. The bait would have been a little too apparent, I think, if he had said it that way.

Q Well, don't editorialize. Just tell me what he said to you. Did he tell you that he wanted you to do that instead of having an investment right?

A No.

Q Now, did you get back to him then or at some point in time, saying let's go ahead with the TCA, but we want to protect our investment right?

A I believe I did.

Q All right. Let me ask you to turn to--let me ask you to turn to Exhibit 1330, December 13, 1993, a letter from you to Mr. Ng.

A Is it December 8th letter? I'm maybe looking at the wrong thing.

Q December 13th, and it's Exhibit 1330.

A No, I have it. Thanks.

Q You have it?

A Yeah.

Q Now, let me show you--I'm going to ask you a couple questions about this. I happen to have a board.

Now, this is your letter following by a few days that dinner, and you refer to his proposal to activate the TCA, and you say, "Regarding the TCA activation, we are happy to accept activation and payment for our services under the clear understanding that we are not in any way prejudicing our position that we have been working under the expectation of an investment into Wharf Cable. As you know, the purpose of the TCA was designed for the bid, and that we clearly had no intention of using that document as a basis of a consulting relationship. We are not consultants. We are investors. You have always understood this." Do you see that?

A Yes, I do.

Q Now, down at the bottom there's handwriting that's been identified as Mr. Woo's that says, "Be careful, must deflect this. How?"

Now, let me ask you, though, about the portion that you wrote.

MR. JENTES: Excuse me, did you say Mr. Woo?

MR. CHASE: Yes.

MR. JENTES: I don't know, there's no evidence that it's Mr. Woo's handwriting.

MR. CHASE: I think we'll prove it pretty easily.

MR. JENTES: I'm not saying it isn't somebody from us, but I think it's going to end up being Mr. Fung's handwriting. But in any event, why don't we not editorialize and--

THE COURT: All right.

MR. JENTES: --and worry about what--

Q (by Mr. Chase) Well, the handwriting, it's not yours?

A No, it's not my handwriting.

Q All right. Now, this is the proposal that you're making to Mr. Ng to go ahead and pay you--if he thinks he wants to pay you under the TCA, go ahead and pay you, but you're not prejudicing your investment right, right?

A That's right.

Q Did he ever pay you under the TCA?

A He hasn't paid me for anything, ever.

Q Did he ever offer to pay you and let you take your chances on whether you had an investment right or not in a court or in a--some other kind of arbitration or whatever?

A Did he pay us under the TCA, is that what you're asking?

Q No, did he ever offer to pay you in any circumstance other than you releasing or giving up your right to an investment?

A I don't believe so. At the end of the dance, he said something about an ex gratia payment, I think, but I'm not sure whether--I would assume that would have been tied to giving up any rights we had.

Q To giving up your investment right?

A Yeah, our investment rights and any litigation rights.

Q All right. Look at Exhibit 1335. Exhibit 1335 is a December 17, 199, letter from Mr. Ng to you responding to your letter.

A December 17th letter, I have that.

Q Right. Now, he tells you in this, "Various directors have expressed strong reservations, as I have advised you,

APPENDIX AP

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3295-3298; Transcript 1328-1331)

Excerpt from Direct Examination of M. Schneider
February 26, 1997
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Q (by Mr. Chase) March 18th, 1994, you've had your dinner with Mr. Ng, he's told you he's going to support you, what happened at that meeting?

A Well, the meeting itself was set up around 10 or 11, I think, in the morning, and we came in, Bill and I--when I say "we"--came into a meeting and there were a handful of Wharf directors. We didn't know whether it was a handful or all of them, I hadn't really paid attention to their whole board slate, but there were a number of Wharf directors in the room.

Q Which Wharf did you understand you were dealing with at that time?

A The big Wharf, Wharf Holdings.

Q Okay.

A And Stephen was there, I believe Emil was at the meeting, too, and we just came in and laid it out pretty straightforwardly for the chairman, Peter Woo, and said, "Peter, here's what's happened." Bill went into some description over the company and what our expectations were and how far along we'd gone with representing to the public, the investing community, where our deal with these guys stood, and we wanted our investment opportunity to be compensated. We really--we really thought it was time to do that, and we made those statements. I made some more statements about the value we had added to the business, tried to give some of the directors an understanding of what was--what our importance had been to get where they were today, and so forth. And we talked for,

well, maybe an hour, something like that. They asked some questions, they asked, you know, some reasonable questions about us.

Q Did you or Bill tell these people that you had a right to invest in the business?

A I believe Bill said it unequivocally and I reinforced it.

Q And was Mr. Ng in the room?

A Yes, he was.
Q Was Mr. Fung in the room?

A I believe he was.

Q Did anybody dispute that you had that right?

A Nobody disputed it, not in front of us, anyway.

Q Okay. So were there questions of you?

A Yeah, there--yeah, there were questions more or less pertaining to other businesses we did and, you know, more things about us. Not really too much about the deal, as I recall, but more--more just generalized information was being asked.

Q Did anybody ask you where did you get this investment right, how did you get it? Was there any question raised about that?

A Well, we told them it came from--you know, as the explanation went, we told them the origins of it, that we'd put these people in and, you know, done all this work, worked on their business plan, redesigned their system, done all of the dozens of things we did, put thousands of hours of man time in,

distracted us from all sorts of other opportunities. We laid that out.

Q All right.

A We didn't--we didn't club them to death with it, though, we--again, having been told the CEO was recommending this, we went in with a very straightforward and I think professional approach to it and didn't try to make a threatening sound or anything of that nature, just said we expect our investment to occur.

Q Now, prior to going in there, had you received some advice from William Ng as to how to handle this meeting?

A Yes, William had advised us that, again, you don't really push Chinese, he said, into a corner, you don't make them appear to have done something improper or stupid, it could create an issue of face, and then it will cause you to lose for sure. So we were trying to keep it balanced into we have this right, we insist on exercising it, but very matter-of-factly, we weren't--we were not threatening. We were there to have our rights exercised.

Q At this point in time, did you have any leverage at all?

A Our good looks were about the last leverage we had at that meeting, so--

Q And what do you mean by that?

A I mean we--

Q Not by your good looks, they'll speak for themselves--

A We--

Q --what did you mean by that?

A We didn't--we were out of--we were out of schlitz on that--in that regard, we didn't have much leverage except that we did try to point out to them, which is a fact, that they were going to have a lot of trouble implementing this business without an expert partner. And that was about the only kind of lever you might create, what things were coming in the future that they didn't understand.

Q But as far as getting them to license and implementation, you'd done it.

A Yeah, they started their business up, they'd gotten their license. The main things that are key we had done. They were now into a phase where I've heard some stories they had some trouble with that we thought we could help them out. We'd hired some good personnel for them. So a lot of the things that are critical on the front end, when we do have leverage, had already been done.

Q Okay. Let me--let me ask you to look at Mr. William Ng's letter to you. This is Exhibit 1369, and it's a letter of March 4, 1994, from Mr. William Ng to you. Okay, are you

APPENDIX AQ

Excerpt from Direct Examination of M. Schneider
February 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3188-3198; Transcript 1221-1231)

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would you have kept going?

A No. What I would have done--and, this is what we were thinking about in October when we clarified with him--is I would have formally and politely withdrawn to maintain my reputation with the Hong Kong government and other franchising authorities around the world and said we apparently have a bad misunderstanding and we've withdrawn.

Q All right. At that point, no harm/no foul or maybe a lot of harm, but--

A There's a lot of harm, but it's a lot less harm than what brought us here today by using our name in the way they did.

Q All right. Now, I want to show you one more thing on this document before I put it away. You'll notice in the second paragraph under line to take with UIH, it has a crossout. I'll show you the previous page so you can see the unedited version. You can see what was crossed out in that second paragraph and what's crossed out is, "at this stage since UIH is the only potential strategic investor and Wharf has no plans to invite others". That's the portion that was stricken from this memo. Do you see that?

A I do see that.

Q Okay. Now, did Mr. Ng tell you at this point in time that Mr. Woo or anybody else within Wharf's hierarchy was having second thoughts or doubts about having UIH as a partner?

A No, not only did he not tell me that, we immediately undertook to start drafting a two-way agreement that x'd NYNEX out. So, we took the steps to start going the route that we normally would go once NYNEX was out. We began the formalization process for our two-way agreement. So, he behaved exactly the opposite of this.

Q All right. Now, let me ask you, following this lines to take and following your discussions, did you have discussions in London with Mr. Ng on this subject?

A Yes, I did.

Q Roughly, how long after this episode?

A You'd have to refresh me. I know it was in the winter, but I'm not positive what the date was.

Q Okay. I will refresh you. Let me ask you if you would look at Exhibit 1041.

A I see 1041.

Q All right. Now, this is a facsimile from you to Mr. Ng, February 12, 1993. It starts out with, "I just wanted to followup on our London conversations on a number of points." Do you see that?

A Yes, I do.

Q Now, I suppose that would refresh you at least to the fact that you had your discussions prior to February 12, 1993?

A Yes.

Q All right. Let me ask you--show you one more document that may help here. That's look over at Exhibit 1075. That's Mr. Ng's--actually, no, I'm sorry. Look over at Exhibit 985, Mr. Ng's notes of that meeting.

A I see them.

Q All right. This indicates a meeting was held in London among Mr. Ng, you, Mr. Booth, Mr. Fries, and part time Dave D'Ottavio and this would have been on January 24, 1993. Are you now refreshed as to the date?

A Yes, I am.

Q Okay. Now, what can you recall about what was discussed with Mr. Ng at this meeting in London on the issue of ownership?

A Well, on ownership, we again asked for more. We said 10% is nice; we'd like 20 or 25 if you're willing to do that.

Q All right. Now, I want to make this clear. When you say you asked for more, are you willing also to pay for more?

A Of course.

Q Okay. And, Mr. Ng's reaction at that time?

A He said that in his discussions when he got authorized by the board to bring in partners, they had circled a 10% amount unless there were extraordinary reasons for going up to more. And, that that was probably something he'd have to revisit whether he was going to be able to give us more ownership.

Q Revisit with who?

A I presume he meant either Peter Woo or his board or--I don't know if it was formal or informal.

Q Did he say and write things to you in the following months to indicate to you that he would have to take an increased ownership issue to his board?

A I can't recall whether he wrote them, but I know he said them. He made it clear that there were a couple issues that he would need to run by his board in a two-way deal. One is how much the second partner could own, whether there should be some reserve left aside for a telephone partner or not, and what kind of governance rights that would mean if there were two rather than three parties in the deal.

Q So, you understood at this point in time that for that kind of an increase in your rate, he would have to talk to his board?

A Yeah, he made it apparent that he wasn't comfortable just doing that by himself to be fair to him.

Q Now, with respect, however, to your right to own the 10%, did he indicate to you at that time or any time in those following months until we get to the fall--and, I'll save the fall for later--did he indicate to you that he would have to talk to his board about your basic 10%?

A No. He never changed or waivered on the 10%.

Q Now, if you'll look, please, at this letter of February 12, 1993 to Mr. Ng--and, this is a followup on the London conversation. First of all, what was UIH doing for Wharf at this time and what kind of things was Mr. Ng interested in UIH doing, as expressed to you?

A Well, doing many of those same things I went over with everybody on the board. We were in the middle of all of those things.

Q Okay. Was he asking for any further participation?

A The recollection I have here is that we were still having quite a bit of discussion regarding the programming issues. And then, I was trying to get Mark Booth whom I felt had a lot of background in launching and developing channels and his team more integrally involved in that process. I think--we're talking quite a bit about that here in this letter.

Q All right. Now, let me ask you to look at the second paragraph of the letter.

A I guess, I also mentioned wanting to own more there.

Q That's what I want to talk about for a minute here. It says--I don't know how legible that is on the screen. So, I'll read it. Some of these copies have been faxed to death and they're not good copies. So, I'll read this. "Second, we have had some recent success in improving our financial strength and would like to discuss having a stake in the venture in the 25% range provided that NYNEX is not going to participate in the business as an investor." Do you see that?

A I do.

Q And then, you go down in the letter to the third paragraph regarding programming and it says, "Third, regarding programming, we are certainly not in any way attempting to compete with HBO and Fox for a Hong Kong premium service. We are your partner and advisor." Do you see that?

A Yes, I do.

Q Okay. Now, did Mr. Ng ever take exception or objection to you calling yourself his partner?

A No. In fact, he introduced us that way many times.

Q And, what does partner mean in this business?

A Partner has only one meaning in any business. It means you're a co-investor and one that shares the risks and returns of a business with somebody else.

Q Okay.

A Or it could mean that you're partners in a house and you share the risk and return of owning that house and the benefits and the detriments.

Q All right. And, that's how you understood it?

A That's how I've always understood the word "partner".

Q Did you understand him to have any other meaning when he talked about you?

A No.

Q Now, look at Exhibit 1075 which is Mr. Ng's response to your letter.

A 1075. I don't have 1075. This is not in the witness notebook; it should be. Let me show you 1075. By the way, getting back to London for a second, was anything happening here with respect to decoders at that time?

A I believe the reason we met in London was to sit down and create a bidding process among the decoder providers.

Q When you say we, who was that?

A Myself, Dave D'Ottavio, Stephen. I believe, Blake Williams was there and maybe some of the other engineering support from Wharf.

Q And, what do you mean by a bidding structure for the decoders?

A We were trying to select our decoder provider and I think there were three candidates still in the game; Scientific Atlanta, General Instruments or Jerrold, and I think the Aerodata people might have still been in the game, the news corps technology. Whether it was called Aerodata, that I can't remember.

Q Okay. Now, let me get back to your letter to Mr. Ng and his response. Now, as you'll recall, in your letter in your second paragraph, you say to him, "Second, we have had some recent success in improving our financial strength and would like to discuss having a stake in the venture in the 25% range." Do you see that?

A I do.

Q All right. Now, Mr. Ng writes back to you in Exhibit 1075, the February 27, 1993 response and in his Paragraph 2 which appears to correspond with your numbered paragraphs, he says, "I mentioned to you in London that given the NYNEX situation, we should put ownership issues on hold until after the launch." Do you see that?

A I do.

Q Now, let me ask you, first of all, what did he say about that in London?

A I don't recall him really saying that in London. I don't, actually.

Q Well, what did you understand him to mean by ownership issues in this context?

A What I thought he meant was whether we would move from 10 to 25. And, also, whenever we'd talk about ownership, we'd end up talking about governance a lot of the times. Meaning what kinds of rights would the minority party have in board terms; you know, what things could you block and what things would they be able to do without your vote?

Q In London or at any time around this time, did Mr. Ng say to you in form or in substance that the issue of whether you could own stock was up in the air?

A No. Absolutely not.

Q And, did he tell you that that's something that would have to be resolved after service launch?

A No.

Q Was there anything to be resolved in your mind on whether you would have the 10% at a minimum?

A No. And, in fact, we kept insisting--I didn't accept this service launch thing. I said let's go back and get these documents done. We'll keep pushing on the ownership issue. And, if ultimately they don't increase our stake, we are where we are. We're at our 10%. So, I think the response I had to this whole approach, well, that's fine. If they're not going to consider the 25% until later, let's just get our 10% and get down the road.

Q Was Mr. Ng trying to delay the documentation until after service launch?

A I didn't believe he was at this time. It became evident he was later.

Q Was Mr. Ng trying to delay the documentation, at all, at this time?

A He didn't act like he was at this time. In fact, we had further face-to-face sessions and Emil and Mike were, as I recall, exchanging drafts at this point and we were constantly setting up for that meeting where we were going to finalize.

Q All right.

A I think I mention that in my letter to him. "We suggest the 18th, 19th, and 20th to finalize all our arrangements together."

Q That would be in your--

A My letter of February 12.

Q Did you get it finalized then?

A No.

Q All right. Let me ask you to look at Exhibit 1083. That's a March 4, 1993 letter from you to Mr. Ng.

A 1083?

Q Yeah?

A I don't have that one either.

Q Oh, sorry.

A Thanks.

Q Now, this response to Mr. Ng's letter where you go on to say in the second paragraph, "I would like to also discuss ownership and financing issues privately when we meet." Do you see that?

A I do see that.

Q Now, you were setting up to have a meeting with him in March, correct?

A That's right.

Q All right. And, on the ownership issue, what was the ownership issue that you wanted to talk to him about and did you talk to him about it in March?

A I wanted to establish whether we were going to get to go to the 20 or 25% and I wanted to understand how they saw the final financing of the business occur and I wanted to go ahead and move through the documentation and resolve everything as quickly as we could.

Q Now, at this point in time, were you still providing services and were your people still working for Wharf?

A Yes, they were.

Q And, were you still working on many of the things that we've looked at on the board?

A Yes, we were.

Q And, did Mr. Ng tell you to stop or tell you that your ownership is in jeopardy or anything like that?

A Of course not.

Q All right. Now, the next document I'd like you to look at is Exhibit 1107. That's a March 18, 1993 meeting.

A Do you ever get the feeling somebody is playing with a different deck of cards than you got?

Q Yeah, yeah.

A I don't have this one either.

Q All right. 1107, March 17 to 19, 1993, agenda.

A I see that.

Q All right. Now, do you recall that group meeting in

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A Well, essentially, we were going to a two-way deal, where it would just be Wharf and ourselves investing. So this is consistent with that understanding.

Q All right. Now, let me ask you, if you will, I want to take you back to October 8th a second, and then we're going to come back to this period of time. You left the conference room on October 8th, you told Mr. Fries you wanted to try to get this written up into whatever documentation was going on. Did UIH then go forward with its end of the deal and commit itself and its troops to assist Wharf?

A Well, what we did was had another, you know, sort of a good happy dinner. We invited my father to come, and I think we spent the next day planning a little bit, and that evening planning on what had to happen. And, yes, virtually immediately thereafter putting Stephen on the airplane, we began to implement his request.

Q All right. Now, before I get to specifically what you did, up to this point in time, you did have people in Hong Kong who were contributing things to the Wharf project; is that right?

A We had people in Hong Kong that were contributing things to the Wharf project to that date. We hadn't pulled them back, no.

Q Well, was there anything new that was happening here as of October 8th in terms of quantity, quality, magnitude, or whatever, in terms of your commitment?

A Yes. The main new thing as I recall it was they were asking basically for a full-time commitment of a number of our personnel, really a refocusing by our organization to make sure they got through their business planning process, won the bid and set up an implementation staffing and business plan that would function to launch their business successfully, which meant shifting from sort of, you know, helping a little bit to helping a lot.

Q Now, Mr. Schneider, yesterday we had Mr. Duffy here from NYNEX, who testified that NYNEX pitched in, spent a lot of time and resources and didn't even send Wharf a bill and never expected -- and didn't have a right to invest. Was that a suitable arrangement for your company?

A No.

Q Why not?

A Well, that would probably be lost in the expense accounts of NYNEX. That would have been a capital call at UIH.

Q Will you explain that?

A Well, in 1992, UIH was literally being funded out of the shareholders' pockets, and I being a significant shareholder knew that everything we did, we were paying for. And we were not -- what that really means is we were not the size of a corporation that could afford to use its very dear resources for a marketing service or sort of strategic effort to just get into a market. We just couldn't do it. We spent our resources very parsimoniously. We were careful where we dedicated them, and we had to know it was going to lead to an investment opportunity for us, or we just didn't do it. That was the internal rule. Now, whereas, at NYNEX or

U.S. West or an AT&T, they're enormous companies, you know, with billions of dollars of revenue, thousands and thousands of staff people, where we have tens, and they can do some of that. In fact, I've seen them do it. Culturally, it's a completely different approach to the business.

Q When you were discussing with Mr. Ng throughout the spring, summer and fall of '92 UIH's participation, did you leave any doubt in his mind that you could not do what NYNEX did?

A Not the slightest iota of doubt was in his mind.

MR. JENTES: Your Honor, again, we get all these conversations like he does something. Could we find out when he supposedly said this --

THE COURT: All right.

MR. JENTES: -- to Mr. Ng and who else was there?

THE COURT: Yes.

MR. JENTES: Those kind of things.

Q (by Mr. Chase) Well, let me ask the question a little bit differently.

Mr. Schneider, in the period of time from the time you met Mr. Ng in Singapore, until the time of October 8th, roughly how many conversations did you have with Mr. Ng?

A A dozen.

Q Okay. And prior to that time, prior to Singapore, you had had conversations with Mr. Ng for approximately a year; is that right?

A Yes, that's about right.

Q And in the course of this period of time, both periods of time, you had personal meetings with Mr. Ng?

A Numerous personal meetings.

Q And in those meetings, did you discuss with him what UIH was all about in terms of its size, its finances, and its needs in terms of an investment?

A Frequently.

Q Can you remember specific occasions?

A Yes.

Q Can you tell us about them?

MR. JENTES: Object again; when, where?

MR. CHASE: Well, I'm going to ask that as part of the question. You tell us as best you can recall, Mr. Schneider, when it was, what you told him, what he told you and what you talked about.

THE COURT: That's fine, go ahead.

THE WITNESS: The very first meeting that I ever had with him, we went into depth on what our company was, and we had sort of a good pedigree, we'd come from a New York Stock Exchange background, but now we were a

private, small company that was specializing in international cable television. We had had some success in Europe and put together three or four large projects.

Now we were starting to look into Asia, and this is really our first set of efforts to feel out the Asian markets and see what might be possible. And I described for him the fact that, you know, we were small, but we were very good and he had the A-team, he had people that were extremely seasoned in the business, operators, engineers, people like myself, like Bill Elsner, like Gene that had a lot of good savvy in terms of everything from financing the business to understanding how it worked, but that we were small and that we were creating our company around the ability to join up with larger companies like his that needed our help, and that we were willing to pursue a franchise or business with them, but they'd have to know it was going to take us a while to catch up on investment and that we certainly couldn't go out and spend money willy-nilly against their project without some kind of a right to invest, because that was our strategy. We were willing to spend, but we had to know we were going to be a partner.

MR. JENTES: Your Honor, we still haven't heard about when this was, where it was, who was there.

THE COURT: Well, we're not going to hold him to that precision over a series of conversations.

MR. JENTES: No, but -- THE COURT:

But he can pinpoint it to the best that he can, and I'll direct that that be the way that you approach that. Do you understand what my ruling is?

THE WITNESS: Yes, I think I missed -- if you look at the transcript, I was identifying the very first meeting we had, and I'm still on it.

MR. CHASE: And you've already testified on that, haven't you?

THE COURT: It's a little bit confusing. He's been on and off the stand, and I think that's part of the problem. But he has said it was the very first meeting. If you recall the date or you have it, you can supply that.

Q (by Mr. Chase) Mr. Schneider, I don't have it handy, but was it sometime in the summer of 1991 or fall?

A Yes, Mr. Chase, it was.

Q Okay. Now, let me fast forward you, because I'm not going to ask you about every conversation you had with Mr. Ng. I'm going to fast forward you to October 8, 1992. Did you have a conversation like this on October 8, 1992? And if so, tell us what you said and what he said.

A Bill and I had a conversation in spades about this in 1992. We said --

Q On October 8th?

A October 8th.

Q Okay.

A And said, "Stephen, this is why this is so important for us to have this understanding today. We are not in a position to go forward and supply you support, personnel or anything like what you're asking for, unless it's unequivocally clear

we're an investment partner with you. And you need to tell us that's your intention, that's what you're going to do, and if not, then we'll part friends, but we'll part right now." And that was the nature of that conversation. He had not the slightest doubt that anyone reasonably could have over the nature of our company, you know, and that's by the fact of what it was, it was not a very big company at that point.

Q Now, before I ask you to tell us about the services you provided to Wharf, I don't want to leave the wrong impression about your company. We've talked about the size of your company. Tell us, though, about the size of the transactions that you've done over the years. And you can do since 1992 as well.

A Well, we've grown quite a bit since then. We announced yesterday a $450 million transaction, which is significantly larger than we would have done in these days easily. But now we're a public company. We're much better financed in the sense of having access to public capital markets, which we didn't then. We've had transactions -- are you talking about way back to United Cable and United Artists?

Q Well, what I'm really trying to get at here is were you a company in '92 capable of handling the commitment that you were giving to Wharf?

A Yes, we were that, because we'd invested into Europe with U. S. West as a partner in one case in Sweden and Norway, with U. S. West in Hungary, maybe $120 million, and we'd invested into Israel in the development of cable and programming channels there, and it was in the order of magnitude of 50, $60 million, I believe.

Q And in terms of providing the expertise and the services, were you capable of doing what they were asking for?

A Oh, absolutely. That's what we really brought. There are quite a few people with capital in the world. There are far less that understand what they're doing in this business.

Q All right.

A So that's what we really brought.

Q With that, let me ask you if you could approach the chart, the time line, and I'm going to ask you do you see those big black bars moving across the line there? I'm going to ask if you could come down here and give us a description of the kind of things that you did following October 8th. And I'll tell you what; I'll let you use my pointer.

Let me do a little redecorating here for a second. I think you're going to need to use a mike, so let me bring that over. If you could, there's a way you could do this and also talk.

A Will you hit me with the question again, please?

Q Well, yes. After October 8th, using that time line, can you tell us basically what your company did? You don't have to go into excruciating detail. But, for example, if you could start -- let me just take you through it. Business plan, what kind of things did you do to assist Wharf with its business plan? And tell us what a business plan is.

A Well, a business plan is probably the most important thing that you can develop for any business because it is the roadmap, especially in a partnership, we view it as the way that people with maybe differing views on how to

accomplish a task will understand how to accomplish it together.

So the thing we focus on may be harder than anything else, is to develop a realistic functional business plan that has a set of assumptions in it. Those assumptions are things such as what do you pay for a decoder, how many personnel do you need in the headquarters, how many personnel man the phones, how many sales people do you need, you know, out in the street. You know, what will be your technique for a master billing system. It covers everything.

It's comprehensive and it's intended to be detailed and it's usually a couple hundred pages long, and it will have a series of assumptions that, you know, the partners, the investors, the managers can look at and use as their guide post for the out years going forward. It usually covers ten years. So it's really what do we intend to do to invest in this company and make it profitable and successful at the end.

It's extremely important in this kind of business that you have a business plan that's solid and that everybody believes in for one really obvious reason. You're spending a fortune up front; the revenues come later as you add customers.

So you're spending a lot of your capital in this time frame -- you start spending capital out here and you're not getting revenue until out a year or two that's significant enough to cover your expenses. And then it might take five to seven years to pay back your capital investment, plus the banks, when you set these things up. So this is critical, and we're very good at this, I think some of the best.

Q What kind of services do you provide in connection with
that?

A This would be an all hands-on effort. This would be everybody from Gene Schneider to me to Bill Elsner, down through the national analysts, the engineers, the operational specialists, everybody gets involved with this because you have to scrub it many times to be comfortable you're doing it the right way. It includes all aspects of the business.

So that's really a focal point effort that I'm sure even Gene got involved with during this time frame to make sure we had a plan that, you know, made sense and everybody understood.

Q Okay, let's talk about the next line down, decoders. You introduced us to that when you were explaining how cable works. What did UIH do with respect to decoders?

A We at United Cable were one of the first groups ever to use addressability in the United States. It's becoming kind of an obsolete -- well, it's not obsolete, it's just part of other technologies now, but we had ordered over a million decoders, which is more than anybody in the country I believed at that time, so we were very knowledgeable about decoders. We were introducing them into Europe.

The reason you put a decoder in is if you're going to offer more than just a plan vanilla service with 30 channels or something, people might want to order movies and they might want to order the Disney channel or other services, these decoders do two things. They allow you to order and tailor your package for your house, or order a pay per view event, a fight or a movie, you know, especially ala carte ordering. And so we were experts in that area.

They wanted to put such a system in in Hong Kong and we agreed with them, it deserved a system like that, one being built at that time. They had sort of a crazy notion of using a line manipulation decoder, as I recall, that really hadn't been built in any quantity.

What you've got to know about decoders is like any other consumer electronic, if you don't build a lot of them, they goof up, the first batches of them don't work. So we were trying to advise them to go with a tried and true technology where millions of them had been built already, which does two things, drives the cost down, drives the reliability up.

So we spent a great deal of time sorting through and trying to steer them away from the English decoders they were looking at. They were built by Newscorp, I think, and it was a line manipulation decoder which theoretically had a higher degree of security in it, but was untested, and then you had to use a smart card. And we just had nightmare visions of these smart cards floating around in -- a smart card is an activation card that they'd send you every so often, or your decoder would quit working.

And they had two things I remember that were disturbing to me about this plan. One, they wanted to sell the decoders down in the corner box, which really gets more to this part of the business. But imagine that, if you sold the decoder and you then had these smart cards floating around, you'd have no control of where they were, who had them, who you give the card to, so we were trying to steer them away from that and go toward a system like we're more used to and that's been successful for us. It's simpler; we own the box, we take a deposit from the customer, we know where the box is, no smart card, you address it all from the computer system in the headquarters.

And that was the work we were doing there, plus trying to save them some money. I think their decoders on that plan they had were enormously expensive as well, and we were trying to get them down to something, you know, when you're putting out 800,000 decoders, you can see, multiply that by $100.00, you've got quite an expenditure.

Q Did you have somebody from UIH working and trying to get the price down?

A We had our chief operating officer, Dave D'Ottavio, working very hard with our purchasing people to accomplish this, this being such a large order.

Q What company was he working with?

A He was working with Scientific Atlanta and General Instruments, and we also analyzed the English Aerodetto product, I think it was.

Q Did Wharf eventually do a transaction with General Instrument?

A Yes, they did.

Q And that's known as Jerrold?

A Jerrold.

Q And what role did UIH play, to your knowledge, in the price structure?

A Well, we have an extremely long relationship and a good one with Jerrold, and Jerrold would usually give us financing terms and the best worldwide price for their products. And I think what we were able to do is drive the

price of the decoder down to, oh, 50, 60 per cent of their original estimates for this plan, and that's millions, over $100 million, I think, in terms of this project.

Q Let me ask you to move ahead to programming and talk about where that fits in and what you tried to accomplish with Wharf.

A Programming was the one area where I feel like we bumped heads the hardest. Our background in programming, we are a distributor primarily. Historically, our companies have been network providers, satellite, cable, wireless and so forth, but --

Q What do you mean by that?

A Meaning we're the people that connect your house and then bring the service in. But we had more and more aggressively in the Eighties been investing in programming along with Turner and the Discovery channel, E Entertainment, Prime Sports, American Movie Classics with TCI, BRAVO, those investments. We started to try to secure our software better and invest in it, and we had been doing that worldwide in our new businesses.

We started five channels up in Israel. We started three in Hungary with HBO as a partner. We partnered up with HBO in Romania and Central Europe. We started some Irish television programming. We were really believers that you did some meat and potatoes programming to drive your business, and it was better to have an ownership interest in it, and we were debating what should be in that programming and how much you should spend on it.

Now, if you spend too much, obviously you've wiped out the margin of the business, and we were trying to

drive these guys toward an understanding of the business where you could keep your -- you really need to keep this gross margin. Let's say something costs $10.00, you can't spend more than about $3.50, in our opinion, to be successful on most models, because you add then the people and the other overhead in, and pretty soon, you're under water.

So we were trying to drive their cost structure down to something that could be sustainable, and then get them away from -- as I recall, they had like a giant local origination plan really where man on the street and cooking shows and stuff. We're saying movies, sports, children's documentaries, get back to the things that work that people like, and they told us we weren't really from Hong Kong and didn't understand.

But this was where we were doing a lot of work, and I had two or three people, you know, that had a lot of expertise working, including the lady sitting there, Ellen Spangler, had done most of TCI's negotiating in the Seventies and Eighties; Mark Booth, who had run MTV Europe, currently works for Murdock, the satellite system in Japan, just launched his Australian business. These guys knew what they were talking about, and we had them come in and out.

Q Okay. Now, get down to network and operation plan, what's that and what did you do?

A Network and operations plans are really the guts of the business. That's sort of how you set it up, how is it technically designed, it is fiber, is it wireless, what's the internal wiring plans, and then it's how do you actually go out and facilitate this, how do you build it, how many people, how many trucks, who coordinates them, where's the

dispatcher, how is that coordinated with the marketing effort. You know, it goes from everything -- it's operational organization right from the CEO or the guy who's running the business, down to the person who answers the phone or down to the installer in your house.

And so that's the guts of the plan. So we're going through -- a lot of the work was on network. We were trying to get them into a design that would migrate from 12 gigahertz microwave distribution into a fiber backed design, which is more the modern network that we were talking about the other day that could bring you telephone, could bring you high speed data, rather than just bringing you one way limited video, which microwave can only really do.

And so we were trying to focus on a tight but efficient operating plan that would allow them to get to success. You know, how do you go out and make this business run. Which people should be there. Who should we hire, where are you weak, all that was part of that.

Q All right, take me to the bankers.

A Well, again, it goes back to the type of business we're in. If you invest purely in equity in a business like this, your returns start to look pretty marginal.

Q What do you mean by that?

A That means if -- let's say this thing was going to be 800 million U. S. to build, which I think is rough numbers, if you put that all in equity, it's not a very good return on the equity. When you go out into the future years and you see the cash streams coming back, you don't get much in return.

Q You mean equity, you mean actually putting in your own --

A Actually your dollars, if we're all the equity investors here together and it's all our dollars, then we're not going to like that rate of return. It's going to look like 15 or something, or twelve, or eleven, which is nice, but it's a risky business. You might put that in bonds; you don't put it into a start-up cable business.

So what you do is you get these guys called bankers, and bankers are used to lower risk, lower return. They'll lend you the money, or part of it, as long as they believe in the operator and they believe in the business plan, they'll lend you up to 60 per cent of the money sometimes, but they stand ahead of you. So if you goof up and get wiped out, they get all the money. But if you're successful and pay them back and they're gone and now you're getting the whole return, which naturally raises the return on your -- let's use the $800 million example. If you only put 400 in and they put 400 in, once you've paid them back, you're getting the whole benefit of the 800 after their return.

So we were trying to set that up. It's a much better business if you finance it, in other words, and we were good at financing.

Q Why are you good and what did you do?

A Well, we finance for a living. My father has been in this business since the Fifties and I have relationships with virtually all -- we had relationships with every bank in the world at United Artists. They knew who we were, they knew we operated these businesses well, and we went out and brought a bunch of them in for these guys --

Q What do you mean --

A -- led tours, introduced them to Wharf. Wharf of course knows banks, too, but they don't know necessarily the same bankers that bank this business.

Q What do you mean by that?

A By what?

Q That bank this business?

A Well, banking is a specialty business, you know. People make cars, make steel, make -- you know, do agriculture; I mean, there are different kinds of bankers for different types of businesses. There are specialty bankers. Certain banks like cable and telephone; other ones shy away from it. Certain bankers within those banks know what they're doing and will loan to you because they understand the business, and others shy away from it.

We were attracting a group of bankers we knew that would step out on a limb a little bit. If you recall, in these days, there wasn't much international cable going on, and we were trying to get a consortium of Asian and U. S. and European banks interested in putting 400 or $500 million toward this business.

Q Okay. And it says leads bankers to Hong Kong. What was that all about?

A Well, I know Bill Hudon had worked on a couple of trips where he did collect some of these leading bankers that we knew had put billions toward the business around the world over the years, got them over to Hong Kong, introduced them to Wharf, got them comfortable with the

project. I think a number of them actually ended up banking Wharf on this deal.

Q All right. Let me skip the line that says application, because I'm asking you about after the application. Let me also skip the name and reputation and we'll come back to that.

Let me ask you about SMBS. What did you do there and what is that?

A This is SMBS here?

Q Right.

A This is the software system that drives the management information services and the billing system, so it's important for accounting, for billing and for controlling your customer. It's a very critical part of this business.

I think Paul Case, who is definitely considered one of the experts in the world of this business, spent his time trying to identify the proper system for them. You know, you have to convert it into Chinese characters and things like that. It's not as simple as going and buying off the shelf. So he was looking for a vendor that would come in and take care of this business properly. This is an ongoing relationship in this particular part of the business. You have to have a vendor that will support the software, support the hardware, make sure that over time, it's going to work. So we ended up sorting through four or five bids, as I recall, with Wharf and ultimately chose one that we'd used a number of times comfortably and I think they're still using them. I'm not positive of that.

Q Okay, let me drop you down to staff.

A Also, it's a cost thing -- pardon me. A lot of this also involves what you pay. This is an ongoing expense that can really eat into your profitability if you get a bad negotiation.

Q Did Mr. Case participate in the price negotiations, to your knowledge, on the SMBS?

A Yes, he did.

Q Okay. And we'll hear from him --

THE COURT: Can we take a break now?

MR. CHASE: Oh, sure.

THE COURT: All right.

(10:16 a. m. - Jury excused.)

THE COURT: Okay.

(10:17 a. m. - Recess accordingly.)

(At 10:40 a. m. on February 26, 1997, with counsel for the parties present, the following proceedings were had:)

THE COURT: Thank you.

(10:40 a. m. - Jury present.)

THE COURT: Go ahead, please?

MR. CHASE: Thank you, Your Honor.

Mr. Schneider, could you resume the microphone?

DIRECT EXAMINATION BY MR. CHASE RESUMES:

Q Mr. Schneider, before the morning recess, I was asking you about the services UIH performed, particularly after October 8. We left off with staffing. Could you describe what that was, please?

A Staffing goes toward what Stephen asked us to help him with at the October 8 meeting in providing some direct assistance. He wanted some engineering help, he wanted some operational help, and he wanted some financial help right away. And, we provided those three people plus additional support from our headquarters to accomplish that. I think the three people I remember we put in there pretty much directly at that point were Bill Pittman who came in and started acting as their operational COO.

Q COO meaning?

A Chief operating officer of the company. It's usually the hands-on person that runs the business in a situation like this. Then, we had another man named Steve Moss who was a very good operational finance man who was helping a lot on the business plans and for all the different businesses here and setting this up. Then, we had Blake Williams who is a sophisticated engineer that was working on the plan for the engineering and operational background. So, those three people came in. We had other people like Sonjia Norman helping. We had people from Denver going over. As I've told you, I was going over, Mike Fries was spending a lot of time with them, Mark Booth from the programming side. We brought some of our English programming people in; Ashley Dardnell, I think, and Simon Sutton and some others. So, we were doing a lot of staffing to support really this bigger effort at that time.

Q All right. Take it to recruiting; what did you do in recruiting?

A Well, we didn't want to keep everybody in there permanently. So, we told them -- for instance, we wanted Bill Pittman back and some of the other people back. So, we said what we'll do is we will help you recruit a permanent staff of expatriates with expertise in the business.

Q What do you mean expatriates?

A Well, we felt that there hadn't been a lot of experience in this business in the Asian markets at this point, certainly not in Hong Kong. So, what we were looking for were key expatriate -- usually, Americans; could have been Europeans that had done more of this business -- to move there and spend three to five years helping build up the business. That's what we call an expatriate.

Q Okay. And, what did you do in that regard?

A We looked through the industry to see if we could find some people that we thought would fit in, and we had a number of resumes internally since we were generating a lot of projects at UIH. We sifted through a number of names and got some interviews together and I think ultimately we selected together, oh, half a dozen people that became their expatriate corps staff.

Q Now, let me take you back to one that we skipped where it talked about UIH name and reputation. Tell us what you did there?

A Well, I think a lot of what Stephen was looking for, in addition to the direct support, was being able to point at personnel in a company that had succeeded in the business

and had built large networks so he could tell the government I can get this done. They had failed once before in their effort. So, he was using us very broadly in the bidding documents, as I recall, and has all of our names and accomplishments and resumes and everything in there.

And then, he also put together a trip that I didn't attend, but my father, Bill Elsner, and some others attended and went over and we were trotted around in front of the government, in front of the banking community, among the Hong Kong community as his strategic partners. And, that lent a lot of credence to his ability to say, hey, I've got the kind of people behind me this time to make it work.

So, that's what we believed lending the name and reputation entailed largely. But, lending your name and reputation certainly all the way through the bid process would have been critical. You find very few bids around the world where you don't bring in someone who has done it in the business. You know, it's pretty normal behavior for a company like Wharf to adopt a partner and then get the personnel out there and show the government and the investors and the banking community that you've got that kind of a partner.

Q And, let me just ask you on the last one, in your efforts to raise money in your other businesses and your efforts to raise money in your other business dealings, did you tell others about your right to invest in Hong Kong?

A Yeah. We were coming into a very capital intensive fundraising mode ourselves about then. And, we did a private placement sometime in here -- I can't remember exactly when -- where we brought Apollo Partners in as a private investor alongside of our current investment group. Then, we went public sometime in here. So, we were filing

a lot of documents with the Securities and Exchange Commission. We were also making numerous representations about our relationship with Wharf that went all the way until the relationship truncated there at the end.

Q Okay. Let me ask you to resume the witness stand, please. Now, Mr. Schneider, I'd like you to open up the first notebook there to Exhibit 108, please?

A Did you say 108?

Q 108, correct. Now, this is a July 1991 UIH board presentation. It has Bill Elsner's name on the thing, but we've established that that meant that we're simply using his copy. Could you look this over and tell us if this was your board presentation back in the middle of 1991?

A It appears to be that, yes.

Q All right. And, it talks about Asia and then it talks specifically about Hong Kong and I'll call your attention to look over at Item # 5 where it talks about Hong Kong. Do you see that?

A Yeah, I assume pieces are chalked out. We didn't lay presentations out with big missing pieces.

Q Excuse me a second; I've neglected my job. I work Saturdays; I'll leave my card at the door.

Mr. Schneider, you were mentioning the chalked out pieces here. I don't think we'll get any argument from the other side if I represent in the course of the litigation process both sides exchanged documents and they're free to

APPENDIX AS

Excerpt from Direct Examination of M. Schneider
February 26, 1997
U.S. District Court for the District of Colorado
(Aplt. App. 3202:14-3205:05; Transcript 1235:14-1238:05)

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Q All right. A couple of questions about that. First of all, why the reference to his board?

A Again, he had made it clear that if we were going to have increased ownership or if we were going to have certain super majority rights that he wanted to review those with Peter Woo and possibly his board. You know, if there's just going to be the two of us--if you look at how they set the agreements up earlier on when there were three parts, then it would take a Wharf vote and one of the other two parties could pass virtually anything at the board level. What I remember their concern being is if you guys have the other two votes, then really you're blocking--using your minority position, you could block a lot of things. And, we said, you know what? That isn't that important to us. But, we'd like some basic rights. Let's outline what you think is fair and we think is fair and then you run it by your board and then we can live with anything reasonable that happens.

Q All right. So, you were having these--

A And, other issue, Jeff, was the ownership issue. We said you've heard us. We've been saying it since the beginning. We want 25 or 20%. It would be more significant to us. But, in the end if you can't get it done, we live with the 10. But, let's go ahead and finish. At that point, we're starting, of course, to just conclude, you know. If it's going to 25, let's write it down that way. If it's not, let's stick with our agreement at 10, and we'll go on about our business.

Q Let me put the 25 aside for a second and go back to the other point that you were making. That is with respect to some of these voting rights and whatever. That you were trying to get some rights, but if you couldn't, you couldn't. Explain that a little bit better, please?

A Well, you know, in any kind of a deal, it happens like this. You have a meeting of the minds. You shake hands. You decide then you're going to document something. Now, you understand the core rights and really nothing happens until somebody acts upon that relationship. In our case, we acted immediately and in good faith to provide the people, to support the personnel, spent the money, went out there to secure those core rights. So, we never had a doubt in our mind that those four or five things that Bill and I and Stephen talked about were going to be in any document we ultimately concluded with. But, we did expect there would be a document. So, we kept trying, starting from October, to go ahead and finalize first a three-way deal, then the two-way deal, and it would have within it whatever it had within it. Sometimes, you get a lot of great things that are additional to your primary investment rights.

Q Like what do you mean by great things?

A Oh, you might get a specific kind of liquidity provision which made it better for you to get out later on. If you're a minority, you're particularly interested in those things that can help your investment. You might get certain rights at the board which, you know, if they were going to do something you felt were improper, you could vote against it. Now, a lot of those things are also in the law, though. So, we studied Hong Kong law and we'd become comfortable that at 10%, we weren't that concerned about the core rights. There were liquidity provisions and protections for minority investors in law over there that trigger under certain circumstances. So, we'd come

to a conclusion internally we would live with the bare bones at that point, but we, of course, would like more. So, we kept asking for as much as we could get.

Q And, were you discussing those things throughout the spring with Mr. Fung? Was Mr. Fries talking with Mr. Fung?

A We discussed those things starting the prior summer.

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3123-3139; Transcript 1156-1172)

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3123-3139; Transcript 1156-1172)

MARK SCHNEIDER

called as a witness on behalf of the plaintiff, having been previously sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION RESUMES
BY MR. CHASE:

Q Now, having said that, Mr. Schneider, now you have to talk to me for a while.

Mr. Schneider, I'm going to take you back to October 8th and you're in the small conference room that adjoins Mr. Elsner's office. And just if I could recap, you've discussed with Mr. Ng your needs, he's discussed his needs, and you've agreed on the option; correct?

A Yes, that's what we did there.

Q All right. Now, did you shake on it?

A Yes, we did shake on it.

Q Did you worry about the fact that you may leave the conference room without the thing in writing?

A No, not particularly.

Q Why not?

A Well, it was not unusual to have an agreement with somebody like that that's that simple, you stand up and shake hands on it and trust each other to take the next steps.

Q Did you then talk to Mr. Fries about documenting the deal?

A Immediately after parting from Stephen and Bill, I walked down the hall to see Mike Fries, and he of course was very curious as to how the discussion went, and I laid out for him the points that we discussed the other day that were the elements of the option, and I asked him to integrate those into the memorandum of understanding that we were working on currently.

Q All right. Do you know whether it was a memorandum of understanding or a shareholder's agreement; do you know specifically what they were working on at the time?

A I don't know what it was called, but it was the deal language that involved NYNEX, us and Wharf.

Q All right. Now, let me clarify one thing here. NYNEX, now, at the time, Wharf, NYNEX and UIH were talking about a three-way deal, weren't they?

A I believe they were.

Q And so it wasn't a surprise to you that there was documentation with those three parties?

A No, it wasn't a surprise to me. We'd been doing that since summer.

Q Okay. And it wasn't objectionable to you either?

A No, it wasn't.

Q But was it a necessary ingredient to your deal?

A Would you ask that again?

Q Yeah. Was your deal conditioned upon having NYNEX in there?

A No, not at all.

Q And just so I want to make sure the time lapse hasn't lost us, tell us what you said to Stephen Ng and he said to you on that subject on October 8th

A Well, my recollection of this time period was Stephen was asking for us to provide an enormous amount of resources, particularly where we were in our corporate history and, you know, basically committing everything we had going on in Asia, plus a lot of our senior people were working in Europe and Latin America would have to be involved, so we were being very careful to understand how he thought this was going to work, what every party was going to bring to the table.

And my recollection in our discussions about NYNEX was they were sort of neophytes in the cable business, they were somewhat shaky in whether they thought this was going to be a good business just on its own. They were definitely interested in the telephone business, we knew, but we weren't sure they were going to stay in, and we said to Stephen in no uncertain terms that, you know, it didn't matter to us at this stage whether they were in or out.

We thought they were good people, we met them a few times in the course of this transaction and other places, but we didn't see that they brought a tremendous amount of value to just the cable part of this bid. We had infinitely more experience in cable. We said they probably brought a lot of

value to the telephone side. So if they went out now, it didn't concern us that much, and we would fall back to just a two-way documentation.

Q So was he concerned about how you would react if NYNEX didn't go forward?

A I think he was more concerned about how we would react. That was the tenor that I got then and through the fall and the winter.

Q Now, given your understanding of what NYNEX had been doing up to this point in time and was doing, would you have in any way conditioned your right on their participation?

MR. JENTES: Object; calls for speculation.

THE COURT: Overruled.

THE WITNESS: I think I said the other day that I wouldn't condition a right like this on anyone else's action, NYNEX or, you know, McDonald's or whoever was involved in the transaction. I can only make a deal between two parties in a deal of this nature.

There is the occasional transaction where it's essential that there are more people involved, and everyone understands we're all in it together. This was not that sort of transaction. We were talking to Wharf one on one. NYNEX was talking to Wharf one on one. If the three fit together all right, that was fine by us, but we certainly would never have conditioned our participation in something of this nature on something so far out of our control as the NYNEX board, never ever.

Q (by Mr. Chase) All right. Now I'd ask you to look, please at Exhibit 777. It's in one of those big binders. It's not in the

jury book, and it's a big document and I'm not going to ask you about the whole document. I'm just going to take you through parts of it, and I'll put it up on the screen here.

A 777?

Q Yeah, lucky sevens. Have you got it?

A I do have it.

Q All right. Now, Exhibit 777 appears to be a draft shareholder's agreement dated down at the bottom November 19, 1992. Do you see that?

A Yes, I think that's right.

Q All right. Now, first of all, let me talk about who the parties are on this draft. At the top, it says Wharf Communications Investment, Limited. We've referred to that as WCIL from time to time. Who was WCIL?

A My recollection is that WCIL was Wharf's holding investment vehicle for these projects.

Q When you say Wharf's holding investment vehicle, you mean a notch below Wharf Holdings?

A Right, but would be a subsidiary that they would hold 100 per cent and invest through that into the other parts of the project. That's my recollection right now about it.

Q When you spoke with Mr. Ng, did he purport to be able to speak on behalf of Wharf and its subsidiaries?

A Yes.

Q And you'd expect that?

A He's the managing director of Wharf Holdings, which would--just as I'm the executive vice-president of United International Holdings, I can speak on behalf of all of our subsidiaries, he certainly can speak on behalf of any Wharf subsidiary.

Q All right. And I believe the--did you know specifically what his title was in Wharf Communications, that he was the president?

A I think we knew he even had a higher title inside of Wharf Communications at the time. I can't remember, president or CEO or something.

Q All right. And I've shown you 1607 briefly. Let me put up on the board here the organization so we can identify where Wharf Communications is in this whole shooting match.

So you've got big Wharf here, Wharf Holdings; right?

A Yes.

Q And you understood Wharf Communications to be the--you said the holding company? What do you mean by that?

A Well, often when we invest into something like this, we will set up a subsidiary that will be a pure holding subsidiary for us to focus our investments. It's a good accounting technique and it's also a good technique just to strategically know where you're focalling your investment commitment, and I think that's one of those for them, meaning it could be the equivalent to UIH setting up UIH Asia Communications, Hong

Kong, or something like that. We probably would have done something similar like that in this deal.

Q Set up a corporation to own the operating company?

A Uh-huh.

Q And would you speak up a little bit, too?

A I'm sorry. I'm not close enough to the mike maybe.

Q Okay. Let me drop down on this page here to the party called Cable Network Communications, Limited. Do you see that?

A Yes, I do.

Q All right. I mean, do you see it on the draft shareholder's agreement?

A Yes, I do.

Q Okay. And that would be this party right here; right?

A That would be that party, I believe.

Q Now, is that what you understood UIH would be investing into?

A That's what I think we were investing into, yes.

Q And that would then own Wharf Cable, Limited?

A I believe that's right.

Q And which would own the cable project?

A I think that's right.

Q All right. And you'd have to review the contract to see if that's how--

A I'd have to look, you know, more carefully at the contract. If you'd like me to, I will.

Q Well, we don't need to because the contract--let's call it a draft, because we all agree it wasn't signed, but it's in evidence so we don't have to have you read it. But I just wanted to put this up here so it's clear.

Okay, so that's CNCL then. And UIH was going to own 10 per cent of CNCL. CNCL would own all of Wharf Cable; right? And as of the time of this draft, who was going to own the other 90 per cent of CNCL?

A Well, I presume--again, I haven't read this in a long time--but I presume Wharf would own a part of it, and NYNEX would own a part of it.

Q All right, let's look at the front page of the draft that I gave you. It says between Wharf Communications Investment, Limited. So Wharf's entity would own a part of CNCL; right?

A Right.

Q And the other party there on this draft is NYNEX, and they would own a part of it.

A Right.

Q Now, let me ask you to look in this draft at Section 13. If you could just flip to Section 13 for a minute?

A I see Section 13.

Q All right. Now, let me put that up on the board. This is a section that is blank at the moment. It says, "Pre-agreement matters. Emil Fung to supply details." Do you see that?

A Yes, I do.

Q Now, prior to this draft, what agreement did you have with Wharf?

A Well, the main one being the agreement we had on October 8th for the option.

Q Okay. And is it your understanding that that's what would go in this section?

A That's my recollection of this section.

Q All right. Now, let me do a throw-back with you for a second. I want to take you back to the technical cooperation agreement time, and that's towards the end of September. Do you remember that?

A Yes, I do.

Q All right. I'd ask you to look in your book at Section--at Exhibit 524, and that is an exhibit that is in the jury book, but I'm going to put it up on the screen, so I don't think you need to worry too much about it.

Let me just say generally, if I could, Your Honor, in every case I can, I'm going to try to keep things on the screen so people don't have to keep looking up and down. We say it's in the jury book in case anybody gets bored in their spare time and

wants to read it, but right now, we're going to try to keep the action all in one place.

A 524?

Q Yes, please.

A That's a Herbert Smith document?

A Let me get to it. 524 is a transmission from Herbert Smith, and that was Wharf's lawyers; right?

A Yes.

Q And it appears to be a draft of the technical cooperation agreement?

A It appears to be that.

Q Now, would you please flip to 14.7 in the draft of the technical cooperation agreement?

And this one, now that I made my little speech about how we're going to keep it all in one place, I'm going to give it in two different ways.

See that language at 14.7?

A Yes, I do.

Q And that's in a draft of the technical cooperation agreement, and this draft is dated September 23, 1995; right? I mean, 1992. That would be the transmittal letter.

A I think that's what I saw. Do you want me to flip back to it?

Q That's all right. Let me just ask you now, in that draft which preceded the final TCA and preceded the bid, there was this language in that draft on my modest little chart here, which also happens to be on the TV screen, but it might be easier to read here, and I'm referring to Section 14.7 where in the draft, it says, "This agreement supersedes and invalidates all commitments," et cetera.

You've seen clauses like that in contracts?

A Yes, I have.

Q Are they fairly standard?

A Usually called an integration clause.

MR. JENTES: Object, Your Honor.

MR. CHASE: Pardon me?

THE WITNESS: They are probably standard.

MR. JENTES: Object, Your Honor. There's no foundation for whether he knows whether they're standard or not.

THE COURT: Sustained.

Q (by Mr. Chase) Are they standard in the deals that you've done?

A They're standard in deals that I've done where you contemplate this is going to be the only documentation that binds the parties.

Q All right. Now, did you have a discussion regarding the elimination of this clause?

A Mike Fries and I had a general discussion that led to a specific discussion about this clause when all of this nonsense about the TCA started popping up. I remember I was in Europe, he was still over there working with Emil and Stephen, and I said there are two things that we will not tolerate in the TCA, and one of them is any kind of expression that this is our deal, this is our only deal, which a clause like that would clearly do. The other thing which led to the concern and ultimately to the meeting on October 8th was we wanted something in the TCA or surrounding document that expressed our intention to invest, and we didn't have that, but we were able to strike this, as I recall.

Q When you say you wanted something expressing your intention, is that your testimony about you expected it to be in the bid itself?

A Either in the bid or in the TCA, or in some kind of a side letter.

Q And that didn't happen?

A No, it didn't.

Q And that was of concern to you on October 8th?

A Of enormous concern to us on October 8th.

Q Okay. And by striking this clause, or having Mr. Fung strike this clause, did you understand that you were preserving all commitments, representations, warranties and other agreements and not waiving them by the TCA?

A That was our intention in striking that clause, yes. See, the TCA was represented to us as not having any meaning of any significance, and Stephen wanted--it did have meaning. The meaning was to show the government they still had a couple of technical partners around and could rely on that through the bid process, which went counter to what our understanding of our negotiation and agreement had been. But when we talked about it, what would this really mean, Stephen said we'll never activate this, we're not going to use it, really. We'll re-cut some kind of a normal looking support agreement upon investment. So my focus wasn't very heavy on this document.

Q Excuse me a second, Mr. Schneider. I think there might be an objection.

A I think he might be objecting.

Mr. Jentes: Well, no, I'm sorry. I didn't mean to interrupt. I just wanted to have a chance before you kept on going, could we find out when this conversation occurred with Mr. Ng, whether it was on the phone, or a date, who was there, et cetera?

Q (by Mr. Chase) Mr. Schneider, because of the little choppiness with your testimony, some of this is repetitious, are you telling us about your conversation with Mr. Ng at or about the time of the TCA?

A Yes. I think I testified the other day or last week, whenever I was here last, that Mike called me in Europe very concerned about this. We had a long discussion. I still didn't feel comforted by the fact that they were representing at Wharf that they were going to take out this language, nothing like this would apparently wipe out our earlier understandings with each other.

As you recall, we were in the middle of negotiating and documenting a memorandum of understanding with NYNEX, Wharf and United International Holdings at this time that had really very little to do with the nature of this TCA in terms of investment versus technical support. This would normally have been the kind of attachment we would have on an investment document. And so I was concerned by the way this was spinning and I asked to speak to Stephen and got him on the telephone, and said, "Stephen, what is all of this? I was just there a little while ago and this didn't come up." And he said, "Listen, we've decided because of Wharf's shakiness--"

Q You mean NYNEX?

A I mean, excuse me, NYNEX shakiness and the difficulty in explaining your balance sheet, which it was complicated, our balance sheet was, and still is, we think this is a smarter way to go, but we're not changing how we're doing things. We still intend for you guys to be our partner, and we'll work it in one way or another that language into the TCA, into the bid document or we'll give you a side letter. And that's how that whole discussion came up, and I think at that point, I got somewhat more comfortable, but not--you know, a week later, we find out it's not in the bid document, it's not in the TCA and it's not in a side letter, and that's when the funnelling of events occurred towards October 8th.

Q Okay. Now, if you could just look, please, at Exhibit 531, which is the actual signed TCA, and confirm for us that that language, 14.7, there's a different 14.7 in the signed, but this language nowhere appears? Can you confirm for us that it was removed?

A Yes, there's a different type of provision in 14.7 now.

Q Okay. Now, while you've got the TCA in your hand, let me just clarify one thing. The Wharf party that was the party to the TCA was the operating company; right?

A Yes, I believe--it's Wharf Cable, Limited; I believe it is the operating company.

Q And the party that you were going to be partners with for your investment into CNCL--the party that you were going to be partners with in CNCL was going to be Wharf Communications; right?

A Yes, WCIL.

Q And you were going to own this?

A Correct.

Q And this was going to own this?

A Correct.

Q And the TCA that you did was this--with this; right? Wharf Cable?

A That's right.

Q But not with Wharf Communications?

A That's also correct.

Q Not with CNCL?

A That's also correct.

Q And not with Wharf Holdings?

A That's also correct.

Q All right.

A You know, and that's not unusual for technical assistance, by the way.

Q Pardon me?

A Often you'll do technical assistance agreement with the operating entity.

Q And when you say the operating entity, as distinguished from what?

A The investment holding companies that own the operating entity. Usually if you look at the way a thing like that would work is you have a couple partners, they both have investment vehicles, they create an operating company. The partners may be providing services to the operating company and, therefore, there's a contract between the operating company and the partners to provide those services.

Q All right. Let me take you forward a little bit in time, and I'm going to ask you to stay in the documentation process for a second, and I'm going to take you past October 8th and I'm going to take you past that draft shareholder's agreement and I'm going to ask you did there come a time when NYNEX dropped out of the discussions?

A Yes, there came a time when NYNEX dropped out of the discussions.

Q And do you know whether Wharf and UIH continued to work on the documentation?

A I know that we did, yes.

Q All right, look at Exhibit 1150, please.

A It's a new book.

Q Pardon me?

A It's a new book, I think. I'm looking at--

Q 1150 I think is also in the jury book, but I'll tell you you're going to get this three ways. If you can see it well one way, you can probably see it three times as well if I do it three ways. Okay?

This is 1150 and it appears to be a mark-up of a letter of intent from September, 1992, and it looks like it's

APPENDIX AU

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3202-3212; Transcript 1235-1245)

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February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3202-3212; Transcript 1235-1245)

Q All right. Now, if you look over on the--this refers to, "I really did enjoy and appreciate the time we had last week in Hong Kong." Okay. And, that would refer to the meeting that we've just talked about?

A I believe it does, yeah.

Q All right. Now, look over on the second page,last paragraph, where is says, "Finally,I think we did make some progress, provided your board can agree with the general terms we discussed on Sunday. I anticipate Mike and Emil will be talking and corresponding frequently with the idea of finalizing our terms of agreement by April." Do you see that?

A Yes, I do.

Q All right. A couple of questions about that. First of all, why the reference to his board?

A Again, he had made it clear that if we were going to have increased ownership or if we were going to have certain super majority rights that he wanted to review those with Peter Woo and possibly his board. You know, if there's just going to be the two of us--if you look at how they set the agreements up earlier on when there were three parts, then it would take a Wharf vote and one of the other two parties could pass virtually anything at the board level. What I remember their concern being is if you guys have the other two votes, then really you're blocking--using your minority position, you could block a lot of things. And,we said, you know what? That isn't that

important to us. But, we'd like some basic rights. Let's outline what you think is fair and we think is fair and then you run it by your board and then we can live with anything reasonable that happens.

Q All right. So, you were having these--

A And, other issue, Jeff, was the ownership issue. We said you've heard us. We've been saying it since the beginning. We want 25 or 20%. It would be more significant to us. But, in the end if you can't get it done, we live with the 10. But, let's go ahead and finish. At that point, we're starting, of course, to just conclude, you know. If it's going to 25, let's write it down that way. If it's not, let's stick with our agreement at 10, and we'll go on about our business.

Q Let me put the 25 aside for a second and go back to the other point that you were making. That is with respect to some of these voting rights and whatever. That you were trying to get some rights, but if you couldn't, you couldn't. Explain that a little bit better, please?

A Well, you know, in any kind of a deal, it happens like this. You have a meeting of the minds. You shake hands. You decide then you're going to document something. Now, you understand the core rights and really nothing happens until somebody acts upon that relationship. In our case, we acted immediately and in good faith to provide the people, to support the personnel, spent the money, went out there to secure those core rights. So, we never had a doubt in our mind that those four or five things that Bill and I and Stephen talked about were going to be in any document we ultimately concluded with. But, we did expect there would be a document. So, we kept trying, starting from October, to go ahead and finalize first a three-way deal, then the two-way deal, and it would have within it whatever it had within it. Sometimes, you get a lot of

great things that are additional to your primary investment rights.

Q Like what do you mean by great things?

A Oh, you might get a specific kind of liquidity provision which made it better for you to get out later on. If you're a minority, you're particularly interested in those things that can help your investment. You might get certain rights at the board which, you know, if they were going to do something you felt were improper, you could vote against it. Now, a lot of those things are also in the law, though. So, we studied Hong Kong law and we'd become comfortable that at 10%, we weren't that concerned about the core rights. There were liquidity provisions and protections for minority investors in law over there that trigger under certain circumstances. So, we'd come to a conclusion internally we would live with the bare bones at that point, but we, of course, would like more. So, we kept asking for as much as we could get.

Q And, were you discussing those things throughout the spring with Mr. Fung? Was Mr. Fries talking with Mr. Fung?

A We discussed those things starting the prior summer.

Q Okay.

A I mean, these are things that were--some form of them existed in drafts going back to that last August of '92.

Q Now, did you ever understand that your right to invest depended on reaching agreement on these additional terms?

A No. And, the reason we didn't understand it that way is because we knew with the NYNEX situation initially we couldn't predict when those agreements would be finalized.

So, we had to pin Stephen down right there in the room and say we're going to act on your word at this point which in our industry gets done, you know, unusually enough. I know some people don't think that in other businesses, but we still would act on our word with people that we're in a partnership like this with. So, we went forward with that understanding expecting fully that we would get documented. We had not reason to believe these people were lying to us at that point. They were acting like people that were in good faith. They were taking my father around Hong Kong and calling him a strategic partner. They were constantly coming back to the table and saying, hey, we don't have any big problems with this draft. We were being slow-rolled, in retrospect, I believe.

Q You were being what?

A What I call a slow-roll which is just keep dangling it out in front of them and keep them moving forward and don't scare them, but we never really intend to sign.

Q And, this is the way you see it now that it's all behind you?

A Very clearly.

Q Did you know you were being slow-rolled at the time?

A No, not that early. I knew it later.

Q All right. Now, getting back to this document here where it talks about progress with the board, specifically at that time did you understand he was taking the 20 or 25 or 15% issue to his board?

A Specifically, he indicated--he wasn't very specific about it. He said there are board concerns which we often took as second speak for Peter Woo concerns. I mean, the absolute dictator of

Wharf is Peter Woo or was then. I think that's how we read it; that he had to talk to Peter and/or "the board".

A All right. And, did he come back to you and say, I'm sorry, you can't go to 15, 20, 25; it's either 10 or nothing? Did that happen during this period of time?

A No.

Q Did that ever happen?

A That's part of the slow-roll. You keep dangling the 20 out there.

Q All right. And, if he'd have come back and said, okay, I talked to my board, you can't have it, and you still want to do the deal, what would you have done?

A We'd done the deal at 10.

Q All right.

A Just like we'd always agreed.

Q All right. And, if he came back and said we can't reach agreement on some of these shareholder issues regarding super majority rights and liquidity or whatever, would you have said, well, okay, I guess I'm not going to do it with you or what?

A We would have lived under Hong Kong law as minority shareholders, if we felt there was adequate protection. So, we would have signed it, anyway.

Q You mean without having any further agreement on these other terms?

A We'd already determined that by that point.

Q But, did they come back to you and say that we can't reach agreement on these terms and put that choice to you as to whether you wanted to go forward without them?

A No, they didn't.

Q Okay.

A In fact, Jeff, every draft kept them in there and Emil would say it's reasonable. Stephen would say I think these are reasonable. I can get these delivered. Those kinds of things were what they were saying.

Q These meaning what?

A These types of things that we are agreeing on in the drafts. These were not just like new ideas. They'd been going on for months. These guys, every time you'd ask them about it, you'd say do you have a problem with this or this or this? We didn't just go to those meetings and sit around in the room and not say anything to each other. We would go specifically through the drafts. If there were an issue, you know, Mike or Emil or Stephen or I would talk about it. And, they said, no, this looks reasonable. There was not much controversy that I can recall in those drafts. But, he did always reserve the right on the issues of governance-- and, this driven largely by the problem they had in their first go-around. They had an agreement, I believe, that got all fouled up with their partners in the first bid and ultimately--

A You mean, before you ever came on?

Q Before we ever came. The U.S. West bid, and they had a

terrible fights over power at the board and who was running it. And, it ultimately unraveled the entire deal.

MR. JENTES: Your Honor, how does he know whether they had terrible fights. The fact of the matter is there weren't any fights, at all. I mean, this is just all made up by Mr. Schneider.

THE COURT: That's not an appropriate objection for you to comment--the objection is overruled.

MR. JENTES: Well, just spouting off about stuff that he doesn't know anything, at all, about, Your Honor.

THE COURT: The objection is overruled.

THE WITNESS: I'll add to that since it's overruled. I'll tell you exactly where I got it, Mr. Jentes, if you want to know.

MR. CHASE: Mr. Schneider, stop; stop. You can't rule on objections.

THE WITNESS: I'm sorry.

MR. CHASE: His Honor has overruled it.

Q (by Mr. Chase) And, now you can explain where you do get your information from.

A We were partners with U.S. West. I advise you call up a fellow called Dick Callahan and then call up Gary Bryson and ask them what their relationships were with Wharf and see how they describe the relations.

Q All right. Now, let's get back to here.

A They're no longer there, but they were at the appropriate time.

Q Let's get back to here. Let me ask you to look at Exhibit 1152.

THE CLERK: 11--

MR. CHASE: 52. I believe, that's--is that in the jury book? All right. It's not, but it will go up on the screen.

THE WITNESS: Let me add another thing. The fights were described by Stephen, as well.

MR. JENTES: I object, Your Honor.

THE WITNESS: You know, it's--

THE COURT: The objection is sustained.

MR. CHASE: All right. We've had enough of that. We'll go on to another subject.

Q (by Mr. Chase) Let me ask you about 1152. Do you have that?

A No.

Q Okay, have that. This is an April 30, 1993 letter from Mr. Fries to Mr. Fung.

A I've got it.

Q Okay. Now, this is a letter from Mr. Fries to Mr. Fung indicating a copy went to you. It starts out with, " When we last met in Hong Kong, we agreed that we would try to

formalize the Wharf/UIH relationship by the end of April." Do you see that?

A I do see that.

Q And, would this formalization be getting the document finished?

A Yes.

Q All right. Now, I'm going to drop you down to the first paragraph that talks about ownership. I want to focus your attention on that paragraph.

A I'm looking at it.

Q "We left the issue of UIH's ownership in Stephen's hands. He was to bring this up at the next Wharf board meeting. Since we have not heard from you on this, we have changed UIH's ownership right to include up to 20%. Has there been any further discussion of the matter?" Do you see that?

A I certainly do.

Q Is that the ownership issue that you left in Stephen's hands; the issue of 20%?

A That's the one.

Q And, is that the one he was supposed to take to his board?

A Yes, it is.

Q And, did you leave in Mr. Ng's hands the issue of whether you could be an owner of at least 10%?

A Of course not.

Q Was that ever left in his hands?

A No. Well, it was before we made our deal.

Q After you made your deal, was that an issue any longer, as far as you understood, between you and Wharf?

A Not until much later.

Q And, is that an issue that he would have to go back his board with as far as you understood at this point in time?

A He never indicated it was.

Q Did he later?

A Yes, much later.

MR. CHASE: Okay. Your Honor, I think this is a good time for the noon recess.

THE COURT: All right.

MR. JENTES: Your Honor, just for the record, the document that's in the book doesn't have the draft MOU attached to it that was sent. I don't know what's going to be done with these books, but it ought to be a complete document.

MR. CHASE: Which book, the witness book?

MR. JENTES: The witness book does not have the memorandum of understanding that Mr. Fung sent, and it's made a part of TX-11--

THE COURT: Take it up during the noon hour. If you have any problem, let me know. But, today is Wednesday; happy camp day, right? Okay.

We'll be in recess until 1:30.

(11: 50 a. m. - Jury excused.)

THE COURT: Maybe I'll find out if they're going to put

APPENDIX AV

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3172-3183; Transcript 1205-1216)

Excerpt from Direct Examination of M. Schneider

February 26, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3172-3183; Transcript 1205-1216)

pointing to the time line and the services that you just went through.

A No, we haven't.

Q One quick question on that last document. You referred to a YK. Who was YK?

A I believe, I'm referring to YK Power who was the progenitor or sort of the patriarch of the Wharf Holdings.

Q Okay. Now, let me take you back to 1992 and let me ask you whether the subject of NYNEX came up again prior to the end of 1992?

A Are you asking a question?

Q Yes. Did the subject of NYNEX come up again?

A Before the end of 1992, yes, it came up again.

Q With whom and how?

A Well, I think the way I remember it most directly is when I went over to Hong Kong late that year, December I believe it was, there was also a very high level team that--we coordinated this trip actually--a very high-level team from NYNEX that were in there also. And, we timed it so that a fellow called Nick Mearing-Smith--they didn't have much cable experience at that point. I think, they just had a few thousand subscribers

they'd started into in England. And, they brought the fellow called Nick Mearing-Smith who had been running that business and whom I happened to know from England over there to meet while we were there and go through a lot of the cable business. And, they also had some of senior people--I remember Joseph Salerno who was, I think, at that time the vice-chairman was there and a couple of other, you know, kind of muckety-mucks from the company were there. And, we had a set of meetings where we had smaller group meetings with Nick involved and Mike Fries and myself and others, you know, Steve Moss and Blake and that group, Bill Pittman. And then, we had some higher level meetings where we talked about the big picture and the investment and the potential for telephone and all of that. And, in those meetings, also included would have been Salerno and some of the others.

Q Was he a high-up at NYNEX?

A My recollection, he was the vice-chairman of the company.

Q Okay.

A I'm not positive of that, but I know he was one of the top two or three people, as I recall.

Q Okay. What were you told in the course of those discussions?

A Well, two things became evident to me while we were on that trip. One was that the cable expertise they did have were extremely concerned about the programming plan in the business; that was Nick Mearing-Smith. And, he was making a lot of noises about their inability to invest unless that cost side of that business got taken care of. I was working to reassure him that we'd made tremendous strides on the network part of it and I felt that with some more work and if he worked

with me, we could get Wharf to start being more rational on the programming part of the business. So, we were having discussions of that nature for a few days.

And then, we had another set of meetings, as I recall, where were all listening to Vince Lam tell us about the telecom project.

Q Vince Lam was with Wharf?

A I think he was a U. S. West person that went over to Wharf somewhere along the way.

Q Okay.

A And, I remember Salerno and I talking after that over a cup of coffee and he started saying strange things like At&t had just bought McCaw and there were all sorts of capital constraints that may be imposed upon NYNEX back at home and this project to them was a little bit on the periphery, although he thought it was interesting that, you know--he wasn't sure it was really going to happen. You know, I got the impression between Nick Mearing-Smith, Henry Van Demark--not really, but between Salerno and Mearing-Smith, I reported this to Steve and I said I don't think these people are going to be investors in this project.

Q You reported that to Mr. Ng?

A Yes, I did.

Q What was his reaction?

A He said he was concerned, as well.

Q Was there any discussion at that time that if they weren't interested it would jeopardize your rights?

A No, the discussion was, more or less, how did that affect us? Did that lower our enthusiasm?

Q When you say the discussion was, who was asking that question?

A Stephen and Emil.

Q All right. And, this is in December '92?

A This is pre-christmas '92, I think.

Q And, what did you tell them?

A I said, listen, we have some concerns here, but we believe that this is still a very, very good project. We certainly don't care whether NYNEX is in or out. We've told you that from the beginning. We like NYNEX. We think they could bring something particularly on switch telephone if we get into that. But, for the cable project, they're not essential. I said, so if they're out, what I'd really like to do is own more. That's sort of where I always went with that discussion with them. I'd rather own 25 or 20, rather than 10.

Q What did that have to do with Nynex being in or out?

A Well, I felt, you know, logically, if they weren't going to take their piece of the equity, then there should be some more available to the foreign partner.

Q All right. Now, let me--I'm going to show you an internal Wharf document from that period of time, from the end of

December. It's Exhibit 887. It's a memo to Mr. Ng from Henry Wise. I'm going to put it up on the screen.

A Did you say 887, I'm sorry, Jeff?

Q 887, yeah. Now, before I ask you questions about this document, let me ask this. Did there come a time in the December '92/January '93 time period where Mr. Ng advised you further about NYNEX's intentions with respect to the project?

A My recollection is that after the New Year--our New Year, not the Chinese New Year; so, early January--Stephen called up and informed me among other things that Nynex was not going to stay with the project.

Q And, that would have been shortly after January 1?

A I think it was in the first week or two of January.

Q Can you recall for us as best you can what he told you?

A Well, he said that they had either gone to their board or whatever. The board had not accepted the proposal and the net effect was that they were not going to be an investing participant, but that they were going to keep quiet and act like they were still participating under the Technical Assistance Agreement.

Q Why was that important?

A Well, we were in the bid process negotiating the final bid at this point and I think he was very fearful that it would show instability if any of us pulled out formally. So, I think it was very important to Stephen to keep the optics in front of the government that the three parties were all still involved.

Q What do you mean by optics?

A Well, once a company like that has decided it's not going to invest, it's really not going to just hand around and be your great support partner. It might say it will be, but, you know--and, the government is not stupid; they know this, too. You know, if a company is not in, then they're out. They weren't going to really be there to help.

Q So, did Mr.--

MR. JENTES: Object, Your Honor, and move to strike. He doesn't know if the Hong Kong government knows or doesn't know.

MR. CHASE: What I'm asking here, Mr. Schneider, is your conversation with Mr. Ng and what concerns were expressed.

THE COURT: The objection is sustained.

MR. JENTES: --a little far afield.

MR. CHASE: Okay.

Q (by Mr. Chase) Let me ask it the way I just asked it. Tell us not your supposition about what the government would or would not do, but the concerns expressed to you at this time by Mr. Ng?

A Stephen felt that was the way the government would respond.

Q Did he tell you this?

A Yes.

Q And, did he tell you or ask you about how UIH could behave over the ensuing weeks and months?

A He asked, number one--again, he had, as I recall, a marked insecurity about how we would react to this news. And, I reassured him one more time, I said, Stephen, we're in this for the long haul. We committed to you in October to stay with it. You know, we're not going to suddenly say we don't want to invest this business. You know, we're still here. We're going to be here. We don't think Nynex is functionally that important to this stage.

Q Did he tell you in any way, shape, or form that because of NYNEX's decision, UIH didn't have a right to invest?

A Absolutely not.

Q Did he tell you in any way, shape, or form that all discussions regarding your right to invest were off?

A No. In fact, we started immediately discussing how we would recharacterize the memoranda to make it a two-way negotiation on the terms.

Q Did you raise with him the issue of if NYNEX is out, we'd like to increase our percentage?

A Yes.

Q And, is that an issue that you discussed with him frequently over the succeeding months?

A Yes, it is.

Q And, was that an ownership issue?

A Yeah, I think it was the primary ownership issue which was how much do we get to own?
Q And, at that time--and, I'm talking early January and in the following months--was there an ownership issue as to whether you would own at least 10 %?

A No. The 10 % was the base, always was. We talked frequently about going up from there.

Q All right. Now, let me show you a document here and then I'm going to ask you a question. This is an internal Wharf memo from a Henry Wise to Mr. Ng and this is Exhibit 887. Have you ever seen that document before?

A You know, I can't recall right now, Jeff, seeing it or not.

Q All right. Let me ask you this. This comes from Wharf's files and I'm going to ask you about Paragraph 7 which is over on the second page and if this accurately reflects the concerns expressed to you by Mr. Ng in your telephone conversation.

A You're looking at Paragraph 7 on Page 2?

Q Yes, Paragraph 7 on Page 2.

A Okay.

Q And, I'll read it if I can figure out which one is 7 here. Okay. The advice he's getting is, "Overall, I should prefer to see as little volunteered about this as possible. That is to say our stance should be that everything is on course. NYNEX and UIH are to be providing full technical support and specialist management expertise just as we said." Do you see that?

A Yes, I see that.

Q Was that advice reflected in Mr. Ng's discussion with you?

A I think that's the general gist of what Stephen was expressing to me.

Q All right. Now, under immediate actions, Paragraph 8, the same page, where it says, "Coming to the more immediate action, my advice would be to keep any explanation to the minimum; if possible, zero. It would strike me as a regulator that if I received a sudden welter of explanations as to why Wharf will not have equity partners at time of bid submission, I should immediately become concerned that some traumatic event has arisen between potential partners." Do you see that?

A I sure do.

Q Was that advice reflected in the discussions Mr. Ng had with you at that time?

A It was right at the heart of the discussion we were having.

Q What do you mean?

A He was fearful that NYNEX's absence would de-stabilize the bid and he was even--I think he was mortified that we might both actually leave. You know, that clearly was rattling him is the possibility of that. I reassured him again that isn't our intention and I don't know why he would get that idea. We're not going to leave.

Q All right. Now, at this time, Wharf's getting ready to submit a telecom bid; isn't that right?

A I believe they were starting to prepare their telecom bid, too.

Q And, at this time, the bid application for cable is pending, right, not decided?

A That's right.

Q And, is that the concern he reflected to you about both of them or either one or what?

A Yeah, I think he was concerned--you know, the cable thing was right in front of the government at that point, within months of being issued, he thought and I thought. He did not want to rattle that cage, at all. And, the Tellco thing, I think, was farther down the road, but I can't recall exact time frame.

Q All right. Well, flip over to the next page. This is Paragraph 12. "If the above corrective measures need to be taken, it seems to me that a key element would be to retain the impression that Wharf and its strategic partners remain on the closest and most cooperative terms." Do you see that?

A Yes, I do.

Q And, is that advice reflected in your discussion with Mr. Ng?

A Yes. He wanted to stay on a close and cooperative terms with us and have us be as quiet as possible about NYNEX's departure and make sure we were still staying there to assist in the effort.

Q And, you used the term "optics" before. Did he express to you his concern about how this would all look to the government if you didn't?

A Yes, he did. He expressed concern that--the natural concern. It would have looked strange to the government.

Q All right. Now, I'm going to ask you to look over at Exhibit 918, please? And, that is in the book, but I'm going to show it up on the screen. 918 is a January 5, 1993 memo from Mr. Ng to Mr. Woo attaching lines to take regarding NYNEX's equity participation. Do you see that?

A I do.

Q Now, first of all, let me ask you while I put this up on the screen--and this would be the first page of it and it appears to be dated January 5, 1993. Is that a fair estimate of when you recall having this discussion with Mr. Ng, sometime in that time frame?

A Yes, it is.

Q Okay. Then, let me show you the third page of the document which appears to the be the lines to take as edited. Do have that in front of you? It's the one with the handwriting on it which, I believe, the record would reflect it is Mr. Woo's handwriting.

A Yes. It says "draft" in the left hand corner. I see that, yes.

Q Right. Okay. Let me ask you, first--I'm going to emphasize this language where it says, "Line to take with staff, Hong Kong government, Hong Kong public, and Wharf shareholders." I'm going to ask you about that one, first. Are you there?

A Yes.

Q Now, prior to this litigation, had you ever seen this document?

A No.

Q Had you ever heard of it?

A No.

Q All right. Now, first of all, on the line to take with staff, Hong Kong government, et cetera, it starts out by saying, "Wharf has reviewed the ownership issue with its strategic partners and agreed not to introduce any new i. e.

APPENDIX AW

Excerpt from Cross Examination of M. Schneider

February 27, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3450-3452; Transcript 1485-1487)

Excerpt from Cross Examination of M. Schneider

February 27, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3450-3452; Transcript 1485-1487)

discussion, we're having a discussion. Oh, well, all three want to be in. Okay, now you document that. Then when one of us drops out, does that mean we made our thought contingent upon that? Heck, no, we didn't. We were there to find out whether Stephen Ng was going to use our people, our skills and our abilities he was asking, and if so, was he going to live up to our investment opportunity, period.

Q So what you wanted to know was find out whether or not you were still--I'm sorry, let me withdraw that.

So what you asked him was, do you intend to go forward with the type of transaction we've been talking about, and we get 10 per cent of this deal. Is that what you were asking him?

A We'd asked for a minimum of 10 per cent of the deal. He always said 10 per cent was fine. We were still asking for a minimum of 10 per cent of the deal, if that's your question.

Q And what you were also asking about was that you wanted to know that you'd get credit for the amount of time and effort that you put in against the prospective purchase price of the 10 per cent; is that correct?

A It really wasn't asking about. It was stating a position and asking if he agreed that that was the position we were both in.

Q Okay.

A And Bill laid it out very eloquently, and Stephen had some questions and thoughts of his own, and we came to a fundamental understanding of what we were going to do with NYNEX in or NYNEX out. This was UIH's position, if we were going to do what he asked us to do. What he asked us to do is put substantial effort toward helping him because he needed--despite the fact he was a sole bidder, my recollection pretty specifically is the government was concerned because Wharf had failed once before, and they were going to look very, very, very closely at this bid or maybe re--or put the whole thing out again, was the concern because it was a sole bid.

So he was looking for help right then to get the thing shaped up, win the bid, go out and start this business. And we said, if we're going to do that, we're going to be clear on the fact that you're going to live up to what you've been saying you're going to do, and let's get that understood among the people in this room, and we'll go from there.

Q I understand, Mr. Schneider, that that's what you thought you were saying, and I just want to pursue what you really were saying, not what you thought you were saying, but what you--the other thing you wanted to clarify was that the price that you paid was going to be pro rata the same price that Wharf and NYNEX paid for their shares ; isn't that correct?

A Mr. Jentes, I guess those people who know me very long or very well very rarely misunderstand what I'm saying to them. And certainly what you just mentioned is another element in it. But what I just told you a moment ago was not unclear to Stephen Ng, and Elsner in this particular incident was even more blunt. We're not in unless you're going to do what you said you're going to do, which included those elements. We've gone over them, and we can go over them again.

But it was a very straightforward and simple conversation to reaffirm a partnership relationship which he did.

Q Again, Mr. Schneider, I understand that's your position. I'm just trying to find out exactly what was said.

You talked about the items that I just mentioned, which was percentage ownership, pricing and conditions you had to meet to close. That's all you talked about, wasn't it?

A Since we were in the middle of substantial documentation, we were really talking about the primary terms of our economic ownership, yes.

Q Okay. Now, let me refer back again to TX-244, which is Mr. Fries' memorandum from June of 1992 entitled "Key JV Terms." Do you have that?

A I do.

Q Okay. Now, I'm not going to go through all of this

APPENDIX AX

Excerpt from the Cross-Examination of M. Schneider

February 27, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3459:14-3463:24; Transcript 1494:14-1498:24)

Excerpt from the Cross-Examination of M. Schneider

February 27, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3459:14-3463:24; Transcript 1494:14-1498:24)

Q Now, as I understand it, there was no written record made of the October 8, 1992, meeting; is that correct?

A None that I'm aware of.

Q You didn't keep any notes, and Mr. Elsner didn't keep any notes?

A I'm not a big note taker, and I don't think Bill is either.

Q Did you see Mr. Stephen Ng keeping notes?

A He may have, I don't recall specifically.

Q When you went out of the meeting, did you write any kind of confirmatory letter to Mr. Ng or anybody else at UIH about this option agreement that you had arrived at?

A I don't really recall doing that. I mean, the terms were so simple. What I recall doing is walking down the hall to Mike's office, relaying them to him and saying, make sure that we start working toward this objective as you're documenting this with Emil. Stephen has agreed again to these points, and we're agreeing to support him, starting immediately.

Q I just want the record to be clear. As far as you're concerned, you didn't write a confirmatory letter to Mr. Ng?

A Not that I can recall.

Q And you never saw one from anybody else; is that correct?

A Not that I can recall.

Q And Mr. Ng never wrote back to you and ever said, gee, I'm certainly happy we reached this option agreement on October 8, 1992?

A I don't--you'd have to show me whether he did or didn't. I can't recall.

Q You can't recall anything like that?

A Not right now, no.

Q Okay. Now, as of the October 8th meeting, the contemplation was that if you went forward and exercised the option, this would call for an investment around $50 million on UIH's side ; is that correct?

A In rough terms, we thought the number could be in that neighborhood. We were still early on in the final business planning stages, though.

Q And as of October 8, 1992, you weren't committed to anything in regard to the 50 million bucks ; isn't that correct?

A We were committed to start supplying support and personnel and resources--

Q All right. I understand that.

A --and do what he asked us to do.

Q But on the 50 million bucks, you had no commitment whatsoever?

A Well, our commitment would entail the money expended by the devotion of personnel, time and resources, so that would go toward the $50 million.

Q Let's take your estimate. That was a million dollars that you might be expending, correct?

A Who knows how much it would have been. It was an open ended commitment.

Q Well, but it ended up being, even on your estimate, no more than a million dollars ; isn't that correct?

A I think that's roughly correct.

Q Okay. Putting aside the million dollars and assuming your number is right, you weren't on the hook for anything beyond that; isn't that correct?

A No, we weren't on the hook at that point for anything beyond that.

Q Okay. And so at any time, you could have walked away from the transaction and left Wharf high and dry ; isn't that correct?

A That's not correct. We made a commitment to them to support their bid, support winning their bid, support setting up their business, and we could not have walked away and not reached our side of the commitment.

Q Now, let me try again.

A In fact -- in fact, we never did walk away.

Q Okay. Let me try again. As of October 8, 1992, other than to supply the troops, as Mr. Elsner referred to them, you could have ended up not coming with the $49 million or $50 million ; isn't that correct?

A That is correct. It was an option. That's what we agreed with them.

Q Now, a $50 million expenditure was a big expenditure for UIH as of October, 1992, wasn't it?

A Another thing you ought to know about the $50 million, that's over a period of years. The trough that you fund into in a business like this isn't all in one shot. You don't just walk in and write a $50 million check. The number was something like 800 million, I think, for the whole project. Some of that would have been debt, some of it would have been equity, and our contributions would have gone in over a three or four-year period.

So the answer is, that was not an unusually huge sum for us to come up with over that kind of a period. It was--it was large in that time in our existence, but, you know, if you look at some of the other projects we were involved in, they were similar.

Q Had you ever done a $50 million dollar transaction without any documentation?

A Yes.

Q That is UIH? Had UIH ever done--

A Have I--

Q --a deal--

A Have I made deals that size that were documented?

Q No, no, no. I said had UIH ever made a $50 million deal without documentation?

A I never made a $50 million deal that didn't ultimately get documented. I made them where we'd been obligated in deals that were that size or larger where documentation didn't exist for periods of time.

Q Putting aside the Hong Kong transaction, isn't it a fact that UIH had never spent upwards of even a million dollars on a development opportunity without a signed agreement?

A I have no recollection. I can't answer that. Don't know.

APPENDIX AY

Excerpt from Schneider Redirect Examination

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3635-3641; Transcript 1670-1676)

Excerpt from Schneider Redirect Examination

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3635-3641; Transcript 1670-1676)

previously sworn, was further examined and testified as follows:

REDIRECT EXAMINATION BY MR. CHASE RESUMES:

Why don't we start there, Mr. Schneider, it seems to be topical; what is your understanding of a strategic partner?

A Well, to me it's pretty self-evident, but we have a lot of strategic partnerships, so I'm used to the term. Strategic means that you bring something to the equation of a partnership that is beyond money usually. It means a certain type of expertise, and that would be what we usually are is a strategic partner in the sense that we bring in expertise. Now, our strategic partners are often someone else who brings a different kind of expertise, like U.S. West might be a strategic partner in Amsterdam, where we are building a telephone network together. We know more about cable, we think they know more about telephones, so we consider each other strategic partners.

Another type of strategic partner would be a local partner that has particular knowledge and reputation in a market, and that would be like Independent News, our partner in Ireland, or Global, our partner in Brazil that we had, or Discount Investments, which is a huge, well respected company in Israel. They might not know anything about cable or telephone, but they are good, well-known investors and can help you win licenses, help you clear political hurdles and get things done. So they're strategic.

That's the word "strategic" in my mind, is they bring something else that's special to a partnership.

Now, a partnership is a partnership. That means that you are sharing a risk and reward. You are together, you know, in a sense that binds you to--and exposes you to the vicissitudes of whatever the business is. If it goes well, you do well together. If it goes poorly, you share that down side. And it means you are together and bound together.

Q Okay. Now let me take you back to where we were just before lunch, and I'd ask you to--do you still have Exhibit 470 handy there, 470? 470 was the draft shareholders agreement between Wharf and UIH and CNCL--and just so--it's Cable Network Communications Limited, and just so we can remember, who is Cable Network Communications Limited?

A That's the investment vehicle that the parties, which would have been Wharf Communications Investment Limited and UIH in this case, would have invested into, and it was intended to hold the various licenses.

Q All right, now, I'd asked you before lunch about any reference to NYNEX in this agreement, and if you'll look over at Paragraph 17 of the agreement, the draft agreement.

A Paragraph 17?

Q Correct.

A Yeah, I see that.

Q All right. Now, that indicates what?

A Well, I think that this draft assumed that NYNEX was not going to make an investment but that they may be willing to stay on as a technical cooperation group of some kind.

Q Okay.

A That they'd support technically.

Q Now let me--let me jump you to another subject here, and I'm going to try--I saw the weather outside and so I'm going to try to move you as fast as I can here. Let me ask you, yesterday Mr. Jentes was asking you questions about an April 1993 draft of a memorandum of understanding and you wanted to look it over and see what it said. And have you had an opportunity to look that draft over? That was Exhibit 1152.

A Yes, I looked it over a little bit.

Q All right, now, did you also have an opportunity to look over a draft that was accompanying a July 15, 1993, memorandum--and this would be Exhibit 1213--and this would be a later draft?

A 1213. Hang on one second.

(Pause.)

Q I believe 1213 is in the jury book. I believe it is. But I'm going to be showing it up on the screen.

A Okay, I've got--

Q Are you there?

A Yeah, I've got 1213 in front of me.

Q Now, 1213 is an internal memorandum from Emil Fung to Stephen Ng dated July 15, 1993; do you see that?

A Yes, I do.

Q And attached to that draft--attached to that memo there's a draft memorandum of understanding dated a blank day of July 1993; do you see that?

A Yes, I do.

Q All right, now let me--let me first go to the memo from Mr. Fung to Mr. Ng that transmits this draft. And I'll ask you to look at this paragraph, where it says, "Acquisition of shares," and then it says, "UIH's option"; do you see that?

A Yes, I do.

Q "Euro version, lasts for 180 days following our joint approval of the business plan"; do you see that?

A Yes, I do.

Q Now, previously you testified that your option was 180 days from license award. Now Mr. Fung is advising Mr. Ng 180 days from business plan; do you see that?

A Yes.

Q What's your understanding of the reason for the change?

A Well, I think when we first set the option we anticipated that the license award and the business plan would be contemporaneous in all likelihood, meaning they'd happen--that the business plan would likely have been done by the time you got the license award. It unfortunately wasn't, so I think that they'd agreed that they would run the option, which is more fair, from the time when you have a business plan so you have something that you can--you can vest into that you know about.

Q All right. Now this is a Wharf internal memorandum from mid-summer 1993, right?

A Yes, it appears to be.

Q All right. Now the next--

MR. JENTES: Excuse me. My only concern is the memo is but the draft is proposed by UIH, as the opening line says. I think the jury ought to understand that the memo is Mr. Fung but the draft is--was UIH's.

MR. CHASE: That's fine.

Q (by Mr. Chase) I mean, you'll agree with that, wouldn't you, Mr. Schneider?

A Yes.

Q Okay, there's no problem there. I want to stay with the memo for a moment here. The next sentence in the memo is, "Exercise of the option is subject to our satisfaction that UIH has adequate access to capital to support its funding obligations

through 1994, approximately 80 percent to planned expenditures under the present business plan"; do you see that?

A Yes.

Q Was that consistent with your understanding back in October?

A That would be very similar and largely consistent with our understanding in October.

Q So being able to show funding through 1994 would match up with funding capability for 18 months?

A Well, it would be about the right period of time, yes.

Q From the date of this memo?

A From the date or likely from the business plan, which I think we anticipated forthcoming pretty soon after this memo.

Q All right. Now in the next paragraph, the next bulleted paragraph--let's see if I can--it says, "UIH is asking for a 15 percent equity stake in CNCL with their previous up front costs included as part of their equity contribution"; see that?

A Yes, I do.

Q Were you asking for something in excess of 10 percent at this point in time?

A We were--we were always asking for a little more. We'd have preferred 20 or 25 even.

Q Now, I'm going to drop down a couple of lines here, and it says, "I offered"--this is Mr. Fung--"that 10 percent was more

appropriate and was the basis of our original understanding"; do you see that?

A Yes, I do.

Q Is that a correct statement of the original understanding?

A Yes.

Q Now let's look at the draft of the memorandum of understanding that accompanied this. Now this is an agreement between Wharf Communications or a draft agreement between Wharf Communications and UIH, right?

A Excuse me, the--are you on the attached document?

Q Yes, the draft that's attached here.

A Yeah. Yes, it is.

Q And--

A This was--this was the--we'd been passing things like this back and forth all spring I think, and this is just another version of it.

Q All right. And there's no NYNEX here, is there?

A No, NYNEX had been long gone at this point.

Q And this is something that's being negotiated now between Mr. Fries and Mr. Fung, is that right?

A At Stephen Ng's and my instruction, yes.

Q All right. Now this--this particular draft, first of all, over on page 2D, see down at the bottom there?

A Yes, I do.

Q Says, "Within a period of 180 days from the date of approval by UIH and Wharf of the pay TV business plan acquisition period and subject to the conditions in D below,

APPENDIX AZ

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3644-3645; Transcript 1679-1680)

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3644-3645; Transcript 1679-1680)

A --has what you call standard and customary terms, which are things that people in business know about and are used to.

Q All right, let me take you back to the condition section, where it says the acquisition of shares is conditioned upon approval by both UIH and Wharf of the pay TV business plan; do you see that?

A Yes.

Q Now, you talked a bit yesterday on cross-examination about the business plan; was that condition a problem for you, that you had to agree on a business plan?

A No, it was really our condition because meaning that Wharf would have to have a business plan. You don't--you don't go into business without a business plan. So at some point they were going to submit what they consider their final and best business plan. We were actually helping them on it. But at that point, it's really our option to agree with it or not. They've agreed to it by the very fact that they finished it. So it's really our--it's a one-way condition in our opinion.

Q Would it make any sense for Wharf to disagree with its own business plan?

A Not much sense that I could see.

Q So when you say a one-way--

A See, they're going to have to submit one to the banks, Jeff, at the very least, they can't just--you know, you can't go out and finance a business without a business plan. So we knew that no matter what they were going to have a business plan. And they'd have to agree with it, because they're going to have to represent it to their own shareholders and to other financial institutions.

Q So you viewed this agreement to business plan for your protection, not theirs?

A Yes, we wanted to make sure we were satisfied where they ended up on certain points. That's one of the reasons we were seeking an option in the first place, so we resolved any outstanding business plan issues before we invested.

Q As of the late summer of 1993, were you aware of versions of their business plan?

A Yes, we were.

Q Were you satisfied with them?

A Yes, we were satisfied enough that Bill called up and said, "We're ready to invest based upon those business plans."

Q All right, now let me ask you one more thing. We've seen that NYNEX is not in this agreement. Does this agreement contain a provision between Wharf and UIH for the admission of new partners?

A I think it does.

Q Look over at Paragraph 5.

APPENDIX BA

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3647-3655; Transcript 1682-1690)

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3647-3655; Transcript 1682-1690)

A Yeah, we had some reasonable--I think under the next--on the next page we had some reasonable rights if it were another cable television or programming partner.

Q But if it was simply a telecom partner--

A They could just do it, whoever--AT&T, British Telecom, whoever they wanted.

Q Did this appear satisfactory to Wharf?

A We never heard of any objections about any of this.

Q All right, let me--let me take you to a new subject. We've talked about--we've talked about Mr. Jentes asked you on cross-examination questions about the--whether you knew Wharf had put partnership discussions in suspension, and you were observing that there were some documents that you were looking at that were supposed--that were during this period of supposed suspension ; remember that?

A Yes, I remember it.

Q All right, I'm going to go through as quickly as I can with you certain exhibits, and I'm going to ask you a question with respect to these, and the question's always going to be the same. It's going to be: at this period of time, did anybody from Wharf tell you that they had put internally partnership discussions in suspension? That's going to be the question. If you forget it, I'll ask it again. Okay?

A I'll try not to forget it.

Q Let me ask you first to look at Exhibit 1173.

A 1173. I'm looking at 1173.

Q All right, this would be a May 28th, 1993, memo from Mr. Fries to Mr. Fung, where he says, "I just wanted to know if you and Stephen would be available for a conference call on Friday morning your time around 8: 30 or 9 to discuss the status of the MOU." Do you see that?

A Yes.

Q Now, that is the day, according to the exhibits that we've seen, where internally they said partnership discussions were in suspension, according to Exhibit 1174, right?

A That's what we saw yesterday, yeah.

Q All right, but at the time of this memo, did anyone tell you partnership discussions were in suspension?

A Of course not.

Q All right, the next document I'll show you is June 3rd, 1993, it's Exhibit 1182. It's from you to Mr. Stephen Ng. "Just a reminder that you were going to call if you had any questions"--this is 1182--"any questions on the term sheet. We would like to keep this moving, so please keep in touch if you have any issues. Both Bill Elsner and I will be around all this week; do you see that?

A Yes.

Q Anybody ever tell you on or before this date that partnership discussions at Wharf were considered to be in suspension?

A No.

Q Look over at Exhibit 1172. 1172 is a group of documents, but I'm going to call your attention to the June 21, 1993, letter that's contained in that group. You might have to thumb through a couple that aren't that date. You're going to have to thumb through a couple pieces of paper because that's--

A You want me to look at all of these documents?

Q Find June 21st, 1993, within Exhibit 1172.

A That's the first one here, I've got it.

Q Oh, okay.

A Yeah.

Q What a coincidence. Okay. This is a--this is a letter from Stephen Ng to you, June 21, 1993. And at the conclusion of his letter, he says, "We haven't had a chance to spend"--he's talking about Peter Woo--no, he's talking about Emil, I'm sorry--"upon his return earlier this week, Emil briefed me quickly about the discussions with Mike regarding our relationship arrangements going forward. We haven't had a chance to spend time together so far, and we will do so as Final Star, CNN, and other contracts get out of the way. Warmest personal regards, Yours Sincerely, Stephen Ng." Do you see that?

A I sure do.

Q Now, did anyone tell you at that time that internally Wharf considered partnership discussions in suspension?

A Absolutely not.

Q Look over at Exhibit 1199, please. This is a June 28, 1993, memo from Mr. Fries to Mr. Fung.

A I see it.

Q "I have just returned from abroad and finalized the changes to the MOU today." Mr. Fries is your employee, right?

A Yes, he is.

Q "Sorry for the delay. Our lawyers in Denver will take one quick read through and I will be forwarding a copy to you tomorrow evening your time." Anybody tell you at or about that time or before that time that partnership discussions were in suspension?

A No.

Q Next document, Exhibit 1201, and I don't believe that one's in the witness book, and so what I'm going to do is hand the witness a copy.

THE COURT: Jake just brought in the paychecks for the jury. He's the most popular person in the courtroom right now.

MR. CHASE: I can't top this. But we'll do what we can do, Mr. Schneider. Exhibit 1201.

THE WITNESS: We can't do any paychecks for the jury, I know that.

THE COURT: You'd be in another courtroom in a hurry.

MR. CHASE: I think the judge would have the United States Attorney down here in short order.

THE WITNESS: All right, where were we? I don't want to do anything to slow you down.

MR. CHASE: Okay.

Q (by Mr. Chase) We are on Exhibit 1201, June 29th, 1993, from Mike Fries to Emil Fung.

A Yes, I see that.

Q Okay. Let me just zoom it in at the proper zoom. "Attached is the latest draft of the MOU. I thought about making it to show changes, but the revisions were more expensive than originally expected. I have also forwarded a copy to Tim Bellis. Please confirm that you have received the document. I will also send you by tomorrow my travel schedule so we can finalize some time to get together." You see that?

A I do.

Q Now, at that time, at the time Mr. Fries transmitted this draft memorandum of understanding, anybody told your company that Wharf considered partnership discussions in suspension?

A No, no one had.

Q Look over, please, at Exhibit 1212. And you know what, I think it's another one that is not in the witness book, so I'll have to bring you a copy.

A I've got a 1212.

Q You do?

A Yeah.

Q Okay, it is. Exhibit 1212 is a July 13, 1993, memo from Mr. Fries to Mr. Fung.

A Yeah, I see that.

Q All right. Now, he's writing to Mr. Fung, "Attached is a marked redraft of the MOU reflecting most of our discussion yesterday. I have not had a chance to run this by Denver but I will do so tonight. Please review these changes. If we can have breakfast tomorrow any time, I can deliver a final copy to you with any additional comments from Elsner, etc. I would also like to discuss the next steps in timing. I leave tomorrow at 12 p. m. , so this would be the last opportunity to get together." Now, as of this time, had anybody informed your company that Wharf considered partnership discussions in suspension?

A Well, no, they're obviously having discussions with us, so not--it can't be in suspension.

Q And then Mr. Fries goes on, "Also for our meeting yesterday, please bring the latest version of the business plan for my review only. I just want to get--I just want to start getting up to speed again on all the relevant issues. We may also decide to leave one of our analysts with Moss for a couple of weeks and help him if necessary and us." Do you see that?

A Yes.

Q Look, please, over at Exhibit 1232.

A I see it.

Q 1232 is a July 29, 1993, memorandum from Mr. Ng to you. "Thanks for your reminder fax which I received yesterday. I apologize for not having been able to get around to reviewing the draft MOU but will attempt to do so as soon as I can."

Do you see that?

A I do.

Q Okay, at that time had he or anybody else from Wharf told you that they considered partnership discussions in suspension?

A The statement in itself was absolutely inconsistent with the partnership discussions being in suspension.

Q And then he goes on to say, "Unfortunately, our project countdown, D Day minus '94, and the banker's visit next week are taking much time anyway." Do you see that?

A Yeah.

Q "Are taking much time away," I'm sorry.

A That's what it says.

Q Okay. And so did you--did you in your own mind decide to give him some slack for those things?

A Yeah, he always would have some reasonable excuse for why we didn't get the thing finished, and that was just part of the process.

Q Is that what you described as "the slow roll"?

A That is the slow roll.

Q Look over, if you will, please, at Exhibit 1238.

A I see it.

Q Exhibit 1238 is a document we looked at I guess it would have been the day before yesterday, and this is the one that talks about in August 1993, Mr. Ng and Mr. Fung getting together with you and Mr. Fries for dinner in Hong Kong, is that right?

A Yeah, that's what it talks about.

Q And is that the dinner where you pulled out your checkbook and said, "We're ready"?

A Yes.

Q And at that time did Mr. Ng advise you of any problems with the memorandum of understanding or anything else between the companies?

A No, he merely stated that he was focused on launch and he'd get to it and we'll get around to it and we'll--it'll happen soon. It was just that kind of thing. But no, he didn't say we had any serious problem, or any problem that I can recall.

Q Did he or Mr. Fung tell you that Wharf considered partnership discussions in suspension?

A No.

Q Look over, if you will, please, at September 7, 1993, Exhibit 1263. This is a memorandum from Ms. Spangler to Mr. Fung, September 7th, 1993. "Dear Emil, Mike wanted me

to follow up with you on the progress of the memorandum of understanding between UIH and Wharf. Could you please let me know where it stands with respect to approval by Wharf? Also, Mike will be in Hong Kong the week of September 13 and would like to meet with you on the 15th if that works with your schedule. Could you please let me know?" Do you see that?

A Yes.

Q Now, at that time, had anybody told you or anybody else in your company, to your knowledge, that Wharf considered partnership discussions in suspension?

A No.

Q Look over, if you will, please, at Exhibit 1276, September 27, 1993. We've looked at this letter before, but I just want to confirm this. September 27, 1993, starting with "Hello from Denver"; do you see that?

A I do. I do, yes.

Q Yes. "And I have also been asked several times in the past two weeks by Gene and Bill about the status of our MOU.

APPENDIX BB

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3603-3607; Transcript 1638-1642)

Excerpt from Redirect Examination of M. Schneider

February 28, 1997

U.S. District Court for the District of Colorado

(Aplt. App. 3603-3607; Transcript 1638-1642)

[1638: 1] TRIAL TRANSCRIPT 02/28/97

you put in there about getting paid under the technical cooperation agreement if you didn't invest, and he went through various other provisions. Did Mr. Ng ever agree to that?

A No.

Q Now, let me take you through this episode here because Mr. Jentes spent some time on it. And this is the issue of you being offered payment under the TCA and whether it was tied to you releasing your investment right. Do you remember that series of questions on cross-examination?

A Yeah, I remember those.

Q All right. I'm going to take you through this quickly, but I'm going to take you through it in some degree of order so we can see what happened here.

Now, following your dinner in Los Angeles where Mr. Ng tried to activate the TCA, you did have correspondence, right?

A Yes, we did.

Q All right. December 13, 1993, he writes to you--

A Am I--am I just looking at the prompter?

Q This is--this is Exhibit--this is Exhibit 1331, I'm sorry.

A Okay.

Q Exhibit 1331, and he writes to you--and I'm going to underscore this. And he says, "In the meantime, I wish to renew my invitation for the TCA to be activated independent of the investment outcome." Do you see that?

A That's what it says there, yeah.

Q Well, that's what Mr. Jentes read to you on cross-examination.

A Right.

Q You answered on December 13, 1993, Exhibit 1330, as follows. Are you there?

A Yes, I am.

Q "Regarding the TCA activation, we are happy to accept activation and payment for our services under the clear understanding that we are not in any way prejudicing our position that we have been working under the expectation of an investment into Wharf Cable. We have spent very large sums in providing you business planning, engineering, personnel, location, equipment purchasing and other analysis and advice which we believe exceeds the value of any payment under the TCA. As you know, the purpose of the TCA was designed for he bid and that we clearly had no intention of using that document as the basis of a consulting relationship. We are not consultants. We are investors. You have always understood this. We would happily accept expense reimbursement subject to the above understanding."

Do you see that?

A I certainly do.

Q And that was your proposal?

A That was my proposal back.

Q Now, Mr. Ng, then, writes back to you, Exhibit 1335, December 17, 1993. And I'm only going to read the portion relating to your TCA dispute here, down at the bottom where he says, "I appreciate your continued enthusiasm to develop the opportunity, notwithstanding that, but that does not alter the fact that my board had not and has not, as you know, approved any invitation for co-investment from any party. I am not sure what position you are striving not to prejudice."

Do you see that?

A I sure do.

Q And what position had you expressed to him that you did not want to prejudice in the previous letter?

A Our investment right.

Q So you write back to him in Exhibit 1342, December 30, 1993.

A I've got it in front of me.

Q "Dear Stephen: I appreciate your reply last week. I think you are well aware of what I mean by prejudicing our position. Let's not debate that any further by fax. I hope we are able to resolve this in a matter that's satisfactory to both our interests. The question I have regards your intention to activate, start

payment of the TCA. We will accept under the disclaimer, which I gave you in my last fax."

Do you see that?

A Yes.

Q And what was the disclaimer?

A That we not prejudice in any way, shape or form our investment rights.

Q Now, I'm not going to take you through all the correspondence, but I'm going to take you to the end of it now.

At the end of the correspondence, May 18, 1994, and this is after your March meeting--and this is Exhibit 1392. This is after your March meeting and after you and Mr. Ng had traded correspondence with each other. Then he writes to you. I'm going to read the whole letter because it's fairly short.

"Our offer to make an ex gratia payment was, of course, to provide some form of compensation to you and your team for your efforts in assisting us with our project and also to take into account that there is no contractual or legal basis for you to claim any money from us. If you wish to go forward with this, I would suggest that our accounting team sit down and work out a suitable arrangement as to the time you spent working with us. This would, of course, represent a final settlement of this matter."

Do you see that?

A Yes, I do.

Q And what did you understand Mr. Ng to be telling you when he said, "This would, of course, represent a final settlement of this matter"?

A This was the issue that Mr. Jentes and I were discussing that is called a release, meaning that there's no way we would be imposing on these poor people to debate our differences in court, and that we'd have to release him from any liability. And that's what he was implying or stating directly here.

Q Meaning if you took payment under the TCA, what would that mean to your investment right?

MR. JENTES: Object, Your Honor. It's leading, and it's already been asked and answered.

THE COURT: Sustained.

Q (by Mr. Chase) How would that impact your investment right?

A We would no longer have an investment right if we were to agree to that.

Q Now, let's go back to some--let me just stay with some of these related topics here for a moment.

Mr. Jentes asked you about language used in your SEC registration statements, and I want to go back through that just to make sure we're clear on that subject. I'll

APPENDIX BC

Excerpt from the Redirect Examination of M. Schneider

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(Aplt. App. 3615:07-3615:19; Transcript 1650:07-1650:19)

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(Aplt. App. 3615:07-3615:19; Transcript 1650:07-1650:19)

(Plaintiff's Exhibit 619 was received in evidence.)

Q (by Mr. Chase) Mr. Schneider, I'm going to ask you about the portion that's on the screen there. "United International has an option to buy between 10 per cent and per cent of the deal, which would mean investment between 30 million and 60 million dollars, said Schneider." Is that right?

A That's right.

Q Now, as of this time, had you agreed to anything over 10 per cent?

A No, we kept trying to get more than 10 per cent, as you know, but we--at this time, we were--we were in agreement at 10 per cent.